RIWAJ: THE WAY OF LIFE IN TRIBAL AREAS

SHARIFULLAH DAWAR

INTRODUCTION

The peace-loving tribesmen of the borderland have been ceaselessly fighting against the hostile forces since their emergence as a distinct ethnic group on the map of the world. Their love for freedom and free will as well as strategically significant geographic location made them victims of foreign invaders and powers. Their unparalleled bravery and chivalry made them invincible and could never been subdued by any conqueror in history; therefore, they were reluctant to cede independence to any state authority. They believed that "*Riwaj*" was based on their social norms and values evolved over centuries which provided them requisite cohesion and social-legal infrastructure. They perceived *Riwaj* to be a panacea for all evils and felt no need for any other governance system through which their liberties in social life could be meddled with. *Riwaj,* they think, is the offshoot of *Pashtunwali* which has the place of fifth religion in the lives of the tribesmen.

While intending to author a book, I felt that there are certain misconceptions regarding dispute resolution through *Riwaj* which needed to be removed; therefore, I restricted my focus to dispute settlement mechanism and its impacts on the tribal society. The intricate mutual existence and working relation among *Riwaj,* FCR, and Islamic Sharia in the tribal belt might be a source of mental anguish for some Pashtun antagonists, which I thought would be comforted if a book on *Riwaj* is authored based on the primary source of data and practical knowledge of the author. Besides, the misconceived notions about the Pashtuns being rigid and extremists due to their religious affinity with Islam would always haunt my mind which I want to remove through solid reasons and logical arguments in this work. In

addition, the hostile policies against the Pashtuns and its impact on *Riwaj* would always afflict my inner' self to awake and present the truth before the world about the exploitation of the tribesmen in the annals of history. And finally, I was inspired by *Cheegha*, the sole book authored by Ghulam Qader Khan Dawar; incidentally we both hail from the same tribe of North Waziristan. His book is a classic work on the Pashtun tribesmen and their way of living - a book based on the practical experience and knowledge of the author.

Though this book on *Riwaj* is not based on a formal research, but a work accomplished on the basis of the practical knowledge of the author, comments of the renowned elders of the tribesmen and civil servants who have served in FATA. However, certain information has been quoted from some authentic books and materials on Pashtuns and *Pashtunwali* which have been referenced properly.

The book narrates the strategic location of the tribesmen and the composition of the tribal belt. It further discusses *Riwaj,* its dimensions, patterns and relationship with FCR and *Islamic Sharia*. It also underlines how disputes are settled under *Riwaj* through the two most effective tools of dispute resolution mechanism - *jirga* and *maraka* in the tribal areas. The author has made effort to pinpoint the different aspects of *Riwaj* in relation to disputes occurred in the tribal belt and its resolution in accordance with *Riwaj* by the elders of the tribes. The disputes on mountains, trees, lands, wealth, women and children have been dilated upon in detail in the light of instances taken from the tribal history.

The book also describes the concept of pluralism in the light of Islam and *Riwaj* among the Pashtun tribes. It clarifies the misconception that all Pashtuns must be Muslims; that rigidity and extremism of Pashtuns are due

to their religious affinity with Islam; and that a Pashtun is one moment a saint, the other a devil. The concept has been elaborated on logical grounds and has tried to prove that rigidity among the Pashtuns is because of the hard cults of *Pashtunwali* which is, in fact, a pre-Islamic phenomenon. These wrong notions have been explained in the light of the commonalities and distinctions existent between Islam and *Pashtunwali*. The commonalities signify that there is greater convergence between Islam and *Pashtunwali* in all walks of life while the distinctions reflect the divergences between Islam and *Pashtunwali* in various facets of life.

The author has attempted to explain how *Riwaj* changed with the passage of time, particularly after the advent of British rule in India and their promulgation of FCR. Besides, this chapter deciphers the impact of emergence of Pakistan and the alienation of the tribesmen by the successive governments in public policy despite their love and sacrifices for Pakistan. In fact, they joined Pakistan with their hearts and minds and sacrificed their freedom and independence on which they had never compromised; yet their loyalty and fidelity is still doubted which needs a second thought on the part of the Government of Pakistan. Moreover, the change in the socio-economic conditions of the tribesmen, the advent of science and technology and its impact on the tribal *Riwaj* have been elaborated to bring it home to the Pashtuns tribesmen that *Riwaj* is stumbling and needs extensive collective effort to save it from decadence and fall.

The book sheds light on the merits and demerits of *Riwaj* under the caption, *'Riwaj–a Panacea for all evils'* with the purpose to show that, no doubt, *Riwaj* is the best combination of customary laws and have truly maintained peace and order in the tribal belt but it has certain flaws which need to be removed in order to make it more viable

and effective. Besides, it also highlights the factors responsible for non-codification of *Riwaj.* At the end, a humble attempt has been made to suggest some viable recommendations which may awaken the tribesmen to put their heads together and think how *Riwaj* can be saved from falling into ashes. The suggestions may prove helpful in formulation of Public policy by the Government of Pakistan for streamlining and mainstreaming of FATA and its better future.

CHAPTER 1

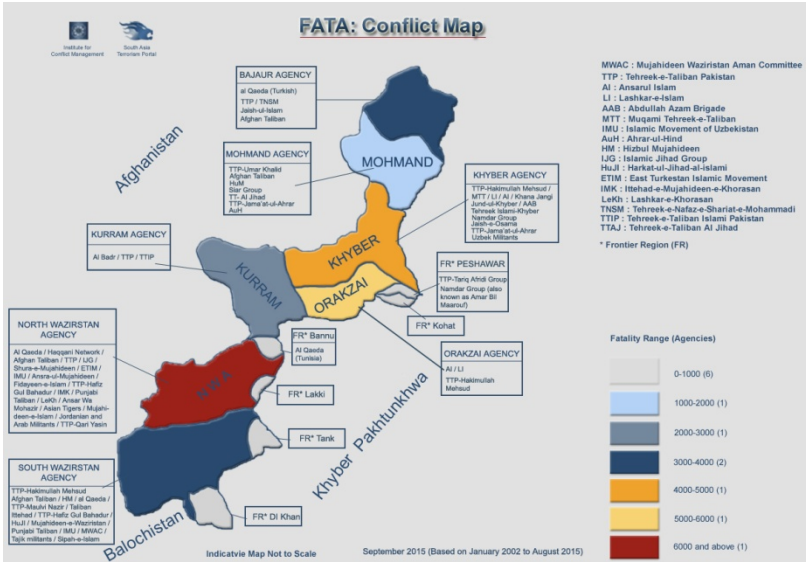
RIWAJ AMONG THE TRIBES OF THE BORDERLAND

This Chapter begins with the geography of the tribal territories and its division into administrative units so as to give a fair picture of the area from historical perspective. Besides, in the succeeding sections efforts have been made to discuss the customary laws of the tribesmen in the light of *Pashtunwali* and Frontier Crimes Regulation and its different dimensions, patterns and customary variations in the tribal belt. *Riwaj* and *Pashtunwali* have also been analysed in relation to *Islamic Sharia* so that a real picture of the tribesmen may be presented to the readers based on the practical knowledge and experience of the author as well as views and knowledge of the tribal elders.

1.1. Borderland – the less understood territory

The borderland comprises territories located between Khyber Pakhtunkhwa and Afghanistan and separated by the Durand line covered by Koh-e-Safed and Koh-e-Suleiman on the North and South respectively. Presently this territory has been named as Federally Administered Tribal Areas (FATA) under Article 1 of the Constitution of Pakistan. It has an area of 27,220 Square kilometres stretching from Bajaur in the North to South Waziristan in the South. It is partly a land of dry ravines and rocky hills and partly green and picturesque valleys which provide beautiful landscapes of natural beauty. The lush green valleys of Kurram, Bajaur, South and North Waziristan Agencies and the lofty pine trees, groves and patches of

green fields of Tirah in Khyber and Orakzai Agencies and Shawal in North Waziristan present captivating and unrivalled scenery of the borderland. The rugged hills and gushing streams, the fast and slow moving rivers of Kurram, Tochi and Gomal give a peculiarly scenic panorama. In short, the borderland - a paradise on earth has never been opened to the tourists, archaeologists and geologists as yet to dig out the truth which is buried since time immemorial.



The borderland inhabits millions of self-reliant and sturdy tribesmen whose character has been under-fire for centuries and their enemies have never missed any opportunity to disparage them. He is being considered as a wild animal. Whatsoever he does in good faith turns against him and becomes a source of nuisance for him. He comes up to rescue humanity from danger, yet he is perceived to be a monster striving to put humanity into obscurity and brutality. He gets enlightened on account of

embracing the universal religion of Islam; he is branded with the epithets of racist and religious fanatics. He lives in the far-flung mountains of the borderland and is devoid of gaining the benefits of advancement in civilization and culture; he is taken to task for his ferocity and savageness on the plea that he is a born savage. He is being attributed with the names of barbarian and blood-thirsty. He lives, indeed, in a very significant strategic location of South and Central Asia that provides a gateway to the raiders and traders; therefore, his defence against the power-mongers, conquerors and raiders is valid and time-bound but his self-defence is conceived as barbarism. Colonel H C Wylly writes, “They are a sensual race. They are very avaricious; for gold they will do almost anything, except betray a guest. They are thievish and predatory to the last degree. The Pathan mother offers prayers that her son may be a successful robber. They are utterly faithless to public engagements; it would never even occur to their minds that an oath on the Quran was binding, if against their own interests…. They are fierce and bloodthirsty… they are perpetually at war with each other. Every tribe and section of a tribe has its internecine wars, every family its hereditary blood-feuds, and every individual his personal foes. There is hardly a man whose hands are unstained. Every person counts up his murders. Each tribe has a debtor and creditor account with his neighbours, life for life…. They consider retaliation and revenge to be the strongest of all obligations. They possess gallantry and courage themselves, and admire such qualities in others….To their minds hospitality is the first of virtues. Any person who can make his way into their dwellings will not only be safe, but will be kindly received. But as soon as he has

left the roof of his entertainer he may be robbed and killed."

The Pashtun tribesmen have been living in abject poverty since time immemorial. They didn't lay foundation of a formal government to cater for their needs and wants; therefore, they were at liberty to snatch their fortune by hook or by crook. Their livelihood depended either on the agricultural produce available from the scarce land or the ransacking of the people in the settled areas bordering with their land; however, history didn't peep into this aspect of human constraints and libelled them as thieves, robbers and predators. Colonel H C Wylly writes, "the vast majority of raids into British territory are committed out of sheer hunger and desperation; and that nearly every attack on British officers or civilians has been carefully planned by bigoted and fanatical priests, who hold out to their ignorant and only too willing tools the prospect of paradise and salvation as the reward for the killing of a hated unbeliever."

The account of the tribesman as outlined by the colonial officers seemed to be the result of the turbulence caused by the restive and reckless warriors of the borderland at a time when the British Empire was extended to all corners of South Asia except the territory inhabited by the tribesmen – a territory more significant strategically due to its confluence with Afghanistan. The observations of the British officials might be correct to the extent of the rigid code of conducts the Pashtun tribes possessed and the exigency of fighting against the aggression and oppression of the British forces; however, any unbiased description of character of the tribesmen must have been different than the politically motivated account drawn by

the British officials at that point in time. Let's have a cursory view of the Pashtun's character through the prism of another set of British officers.

Colon H. C. Wylly mentions the account Lieut. Enriquez has given in his 'Pathan Borderland' wherein he describes, "the tribesmen, on the whole, more justice, if less vehemence, than having some of those other writers from whom quotations have here been made. The Pathan, he says, is not as black as he is painted. It should not be overlooked that most of the tribes have only been established three hundred years in their present territories, and that their habits are not really much worse than those of the various English tribes after their final settlement. … For stories of gross treachery, or cold blooded murder and inter-family strife, we have only to turn back the pages of our own history book. In fact, it seems quite unfair to judge the Pathan according to twentieth century standards. For him, it is still the tenth century. Moreover, it is ungenerous to assert that there are not many nobles' exceptions amongst them…. He will never allow you to abuse him, but makes up for it amply by never making you wish to do so."[1]

Arnold Keppel epitomizes the character of a Pashtun tribesman as, "The Pathan has been dubbed cruel, treacherous, miserly, and, in fact, every epithet of an opprobrious nature has been showered on his devoted head at one time or another by men who were either incapable of seeing things from the Pathan point of view, and of making allowances for his shortcomings, or who were so hidebound by humanity-mongering sentimentality which passes today for the hallmark of a liberal mind that

they shudderingly dismissed the Pathan from their thoughts as a un-reclaimable savage. And yet the same man, in all probability, would reserve a corner in his heart for Cesar Borgia, Louis XI or King John, and even find an excuse for the atrocities of "Jack the Ripper" under the plea of crime passionnel".[2]

In fact, the tribesmen are congenitally straightforward, simple and peace-loving people. They never resort to aggression without reasons. They take up weapons only against the aggressors, or if they think, their *Riwaj* or religion is at stake. They are not accustomed to statutory laws due to non-existence of the writ of the central authority in their homeland throughout history; therefore, they love freedom and have rigid cohesion with *Riwaj*– means the ways of their forefathers that is un-codified indeed but socially recognized and acceptable to all.

This mountainous region has its own peculiar history. The tribesmen had set a self-rule in the borderland wherein they would live with full honour and pride. They believed in unity, faith and discipline; therefore, they enjoyed freedom and were never subdued by any invaders in the annals of history. Though they had never established any central government of their own, yet their social and informal judicial systems, based on the cults of *Pashtunwali* and *Riwaj,* had made them a hard rock to pluck despite hundreds of attempts made by local and foreign invaders. They had no regular force to fight with but they could raise a *Lashkar* emergently to tackle with any untoward situation. They had no training in handling sophisticated arms of the time, but they, being born soldiers, knew how to use weapons and ammunitions in

war times. They had an informal system of dispute resolution, means *jirga* and *maraca,* through which they would maintain peace and social order in the society. Colonel H C Wylly writes, “And there is a charm about him, especially about the leading men, which almost makes one forget his treacherous nature. As the proverb says - ‘the Pathan is one moment a saint, and the next a devil.’ For centuries he has been, on our frontiers at least, subject to no man. He leads a wild, free, active life in the rugged fastness of his mountains; and there is an air of masculine independence about him which is refreshing in a country like India”.[3]Olaf Caroe describes the freedom of the tribesmen as, “In the people of Waziristan and the Afridis, the consciousness is narrower still. With them it is more usual to hear a tribesman invoke political loyalties by speaking of *Mizh Wazir*, *Mizh Maseed*, *Mung Apridai*, We Wazir, We Maseed, and We Afridis’. This is because, miraculously, their tribal cohesion has so far preserved them from subjugation to any administration, whether Persian, Turks, Mughal, Afghan, Sikh or British – all have found it wise to deal with light hand – and the tribes show this in their pride of speech and bearing”. [4]However, this independence, freedom and self-rule of the tribesmen couldn’t withstand the repressive, oppressive and persuasive policy of the colonial officers. As a result, the *maliks* of the tribes yielded in to invite the Britishers to take over. It is, however, noteworthy that the ordinary tribesmen never recognized the British suzerainty over their territories, fought invariably against the occupants till

their ouster and preferred to live under the shadow of *Pashtunwali* and *Riwaj*.

Tochi valley, North Waziristan

Kurram Agency, FATA

The borderland used to be the gateway between South Asia and Central Asia even in the distant past. The Khyber Pass, Tochi Pass and the Gomal Pass were the main gateways used by the foreign invaders and traders. The Khyber Pass in particular witnessed countless events in the history of mankind. The Aryans, Persians, Greeks, Bactrian, Scythians, Kushan, Mongols, Turks and Mughals, all rode through these Passes and changed the course of history in this part of the world. The Persians under the Darius and the Greeks under Alexander the Great passed through these routes to conquer this land and satiate their lust for fame, wealth and power. Besides, the Muslim conquerors such as Mahmud of Ghazna, Shahabudin Mohammad Ghori and Zahiruddin Muhammad Babar also traversed these gateways to conquer India, which ultimately led to the foundation of Muslims Empire in India.

Bab-e-Khyber, the starting point of Khyber Pass

The foundation of Muslim Empire in India was not a feather to have been set in the caps of the Central Asian

conquerors only. The Pashtun conquerors of Sur dynasty, Lodhi Sultans and Ahmad Shah Abdali of Durani tribe had a fair share, whose combined reign makes hundreds of years of Pashtun rule over the sub-continent. [5] However, the 19th century witnessed an awful downfall of the Muslim and Pashtun kingdoms and led to the emergence of British colonial empire in the sub-continent. The colonial authorities put their entire focus on the Pashtuns in the North West whom they conceived as the only potential rivals. They initiated forward and closed door policies to bridle the stubborn Pashtuns but they failed to achieve the desired results with the existing administrative and legal systems. Hence, they felt it imperative to devise new regulation for the Pashtun tribes. Thus, the Punjab Crimes Regulation of 1872 was promulgated under which they decided to create new administrative units, inter alia, under the name of administrative agencies. Khyber Agency was the first to have been created in 1879. However, it was given the full-fledged status of the Agency in 1902. Kurram was awarded the status of Agency in 1892, followed by North and South Waziristan Agencies in 1895 and 1896 respectively. Each Agency was put under a competent British officer - the Political Agent who used to be an agent to the British Empire in this part of the world.[6]

Under the silhouette of the closed door and forward policies, the Britishers divided the Pashtuns in such a manner that they never got united again and are still scattered in their own homeland. After the defeat of Amir Sher Ali in the Second Anglo-Afghan War in 1878, the

Britishers occupied Kabul and forced the Amir to leave and placed his son Amir Yaqub on the throne. As a result, the treaty of *Gandamak* was signed in 1879 by which the Britishers secured the right to open an embassy in Kabul and exercise control over certain frontier territories that included most of today's FATA and some parts of Baluchistan. In return, the British Raj agreed to support Afghanistan against any foreign aggression and provide an annual subsidy in the form of cash and supply of arms. The treaty of *Gandamak* was, in fact, struck in duress by the Afghan Amir but it heralded the division of the Pashtuns and their subjugation by the foreign powers.[7] Since then, the process of dismemberment of the Pashtuns set in. In 1893, the Britishers triumphed to divide the Pashtuns into 'Lur and Bur' Pashtuns (East and West Pashtuns) under the Durand Line agreement followed by the division of the trans-Indus region into settled and tribal areas under the new settlement in 1901.

This irony of destiny of the Pashtun tribesmen did not end here. In 1947, Pakistan came into being and a new era of their marginalization began. The successive governments in Pakistan added the Mohmand area into the tribal belt and created Mohmand Agency in 1951 followed by Bajaur and Orakzai Agencies in 1973. The tribal territories were further divided into administrative Agencies and frontier regions (FR). The frontier regions of FR Tank, FR DI Khan, FR Lakki, FR Bannu, FR Kohat and FR Peshawar were created out of those tribes which had lost their linkages with their main tribes in their respective areas. The intensity of hatred of the Britishers and subsequently the successive governments in

Pakistan against the Pashtuns is quite conspicuous. They divided the Pashtuns up to the extent of families, first by Durand Line and then by the narrowed division of the Agency into protected and non-protected areas.

As a result of this alienation, the tribal territories turned into a huge no man's land of seven political agencies and six frontier regions as mentioned above. In 1973, the tribal territories were declared as a part of the federation under article 1 of the Constitution, even then they continued to be tribal territories and didn't come into the mainstream Pakistan.

By this undesired love of the colonial authorities followed by the successive Governments in Pakistan, the *Riwaj* of the tribesmen underwent drastic changes in its application and procedures. *Jirga* got official status and *mashran* of the tribes turned to be representatives of the government with a new title of *maliks* to keep liaison between the tribes and the government. They began to play subservient role to the Political Agent that was thought to be unbecoming of a dignified tribesman. In addition, the tribesmen forsake their passions and love for freedom and joined their newly created homeland for which they laid down countless sacrifices. However, their loyalty and fidelity have always been taken for granted which caused a sense of deprivation and alienation among them.[8]

Bajaur Agency, FATA

Tira Valley, Khyber Agency

1.2. Mainstream tribes in the borderland

The borderland is said to have been '*Illaqa Ghair*'- means a no man's land where there was a law of the jungle and might was the right. Later on, it was named as *Yaghistan* - means the land of the rebels, a word used by Amir Abdur Rehman, the King of Afghanistan.[9]I beg to differ with this misconception because customary laws do not operate in a space or desert but in an area where people of love, courage, chivalry and honour - the tribesmen live in. They are egalitarian in nature and live in a society where all members are treated as equal. They have equal opportunities in socio-economic facets of life. They believe in love, affection and cooperation. They resolve all their disputes through *Jirga* and *Maraka* - the two best tools of dispute resolution in *Riwaj.* They have a balance of powers amongst the tribes; therefore, there is a little space for crimes and criminals. No individual is allowed to protect the enemy of the fellow tribesman, for it is cognized as offending the latter. A tribesman can seek protection in *Riwaj* under certain conditionalities including living within the customs and practices of the local tribe, among other things, due to which the crime rate remained minimal as compared to the rest of the country. They have *mashran* and *maliks* in the tribe but they cannot bully the tribesmen on account of their status. No doubt, disputes do arise among the tribesmen which revolve around *Zan* (Woman), *Zar* (Wealth) and *Zameen* (Land) but are settled according to *Riwaj*. It must be mentioned that *Riwaj* governs the lives of the tribesmen and has specified limits, limitations, roles and responsibilities for all tribesmen and women. Minors respect the elders and

the elders have compassion for minors. Women are not merely chattels to be sold out. No doubt, they live within the four walls of their houses, they have no responsibility on their shoulders to cater for the financial obligations of their families and hold due regard in the tribal life. They are the valuables whom, if touched with ill-intension, are construed as harming the *namoos* of the tribesmen which usually results in honour killings.[10]

The tribesmen have extreme homogeneity in term of ethnicity, creed and religion, yet they are divided into several mainstream tribes. Each tribe has its own peculiar characteristics. Each tribe is further divided into sub-tribes, *khels*, *Kandi* (section within the *khel*) and family *(Khandaan/koranai)* which is the basic social unit. Each tribe follows its own customary laws - *Riwaj.* Each tribe is headed by a tribal chief and each *khel* by a *malik*. This tribal composition runs in accordance with the system of *Nikat. Nikat* is a word derived from the term *Nika* - means forefather/ancestor.It is through this system that the rights and obligations of the tribesmen are preserved corresponding to their hereditary and genealogical intimacy and affiliation. The *Nikat* system, in fact, regulates the profit and loss share, benefits or awards for services rendered to the government as well as booty received from the war and raid by a tribe, *khel* or family. For instance, if the tribesman lays claim over a land he says the land is his *Nikat* which he has inherited from his forefather. His forefather would either have occupied a *Shamilat* land or would have purchased it or would have received a share of the conquered land in the tribal division (*Wesh*) on the basis of *Nikat*.It is worthy to note

that profit and loss is apportioned in term of each male member called *Khutta/Sarhi pa saar* or pedigree.

Dr.Taj Muhammad Wazir describes that *Nikat* System has been crafted on the basis of contribution to the fighting force of the tribes against Britishers, for which he refers to the profit and loss share of Wazir and Mahsud tribes in South Waziristan. He mentions when the Britishers arrived to occupy Wana in 1893, the *Lashkar* which attacked the British army camp, comprised both Ahmadzai Wazir and Mahsud in which the former were much less in number as compared to the latter due to the fact that the raid occurred in the month of November when the Wazir tribe had migrated to Bannu and Gomal areas in pursuit of fodder for their herds of animals. He further adds that, in the Jirga held with Robert Groves Sandeman in Zhob in 1892, the elders of Wazir tribe were one-fourth of the Mahsud tribe that is why the incentives of the tribe were fixed as one-fourth. Moreover, the tribes that provided more services and expedited payment of fines were granted more incentives and preference by the Britishers. [11] I do agree with Dr.Taj Muhammad's arguments of *Nikat* System to a greater extent, but there are certain points which need to be clarified.

Nikat system is based on profit and loss share as mentioned above, but it didn't run on the basis of provision of fighting force by the tribe only but the overall strength of the tribe. For instance, Mahsud were 18000 while Wazir were 12000 in number as recorded in the census conducted by Ahmad Shah Abdali in South Waziristan (Caroe: 258); as such their share in profit and loss should have been two-fifth, but the drawing of the

Durand line in 1893 divided the Ahmadzai Wazir due to which their share would have been changed. In North Waziristan, the share in profit and loss between Wazir and Dawar should have been two-fifth as the former were 18000 in number while the latter were 12000 corresponding to the census of Ahmad Shah Abdali (Caroe:258).

Dr. Taj Wazir also argues that the Britishers increased the allowances and incentives of the Mahsud tribe against the Wazir, due to the reasons that Mahsud were paying the fine levied by the colonial officers well in time and provided improved services, has no valid ground, for it was not the prerogative of the British administration to multiply or lessen the ratio of allowances and incentives but a set formula existed among the tribes before the arrival of Britishers which was recognized by all and sundry. Any deviation from the accepted pattern of *Nikat* could offend the cousin tribe which the Britishers could never afford at that critical moment in history.

Naushar Khan, a retired political officer says that Mr. Isaac Bruce, the then British Commissioner introduced the formal Maliki system in 1893 rather than *Nikat* system which used to exist since the Mughal era and was followed by Ahmad Shah Abdali as such. Like Khyber Pass, Tochi Pass was also a gateway to India and Central Asia for the raiders and traders. History reveals that the local tribes of Wazir, Mahsud and Dawar never remained under the authority of any invaders; however, the Mughals brought them under the partial suzerainty of the Mughal rule. They were left independent subject to the payment of revenue to the Mughal Governor at Kabul. Thereafter, the elders of the tribes decided that they

would share profit and loss of the tribes on the basis of *Nikat*. The Britishers just followed the same; nonetheless, they transformed the *Nikat* into a formal system under which the tribes would make up for the loss and would receive the gains, if any, under the aegis of the maliks. The *Nikat* share of each tribe, sub-tribe and even family was entered into the official record and strictly adhered to; therefore, the appointments of *Khassadar* and the formation of *jirga* was kept according to the system of *Nikat* for smooth running of the administration.[12]

It is of utmost importance to state that the *Nikat* system did not exist in the official circle only, but was a part of the tribal life in totality. The tribesmen used to raise a *Lashkar* and funds on the basis of *Nikat* of each tribe, if required. After the creation of Pakistan and joining of the tribesmen therein, the *Nikat* system was kept continued in original as existed in the official record of the political administration. In fact, the *Nikat* system still has a grip on the tribal affairs and the tribesmen never agree to change it for any administrative or socio-economic reasons.[13]

Keeping in view the relevancy of the topic I must mention here that the basics of *Riwaj* have been derived from *Pashtunwali* which has equal application on all Pashtuns; however, they have customary variations and distinctive features from one another. While discussing *Riwaj,* instances have been taken from different tribes; therefore, I feel the need to highlight the mainstream tribes of FATA so that the readers may understand the tribal composition, applications and procedures of *Riwaj* keeping in view the features of each tribe.

Wazir

Wazir is the prominent Karlanri tribe after the name of Wazir, the son of Suleiman and the grandson of Karlanri. Wazir had two sons, namely Koday/Kadhray and kakay/Lalay. They were the dwellers of Khost (today's Afghanistan).They moved to the East in the 14th century and settled down in the north of Tochi valley and the South of Gomal Pass. It was after their name that the Britishers named the Gomal and Tochi territories as South Waziristan and North Waziristan respectively. Wazir is the largest tribe and has strength of 30000 as per census made during the reign of Ahmad Shah Abdali out of which 18000 live in North Waziristan and 12000 live in South Waziristan (Caroe.258). The Wazir of South Waziristan are called Ahmadzai and those living in North Waziristan are called Uthmanzai after the names of Ahmad and Uthman respectively- the two sons of Musa Darvesh. Jointly they are known as Darvesh khel in the comity of tribes. It is pertinent to mention that the descendants of Lalay who are known in history as Lalay Wazir have stayed in Afghanistan as yet. These two branches of Wazir are further split up into many clans, sub-clans, and families whose details are available in the history books on Pashtun tribes.

Wazir are the most resolute warriors of all the Pashtuns. They speak soft dialect of Pashto, which is difficult to understand. Their vocabulary is full of unique words and phrases just unknown to common Pashtuns. They are lively people and love to dance to the beat of the drum miles away. They prefer to maintain their independence and follow their own customs and habits. They hold immense respect for the Sayyeds and Mian (the

descendants of the Holy Prophet) and other religious leaders which is evident from the *Lashkar* raised by the Fakir of Ipi who was hailing from the Wazir tribe.[14]

Wazir are the dwellers of mountains indeed but they have more sagacity and greater wisdom than the Mahsud and Dawar. They are cool, witty and think hundred times before they speak or take action. They are eloquent orators and excellent *jirgamar.* They have established businesses of vegetables, fruits and transport of heavy vehicles. Colonel H C Wylly says, “Physically the Wazir are tall and muscular, and they are also courageous, while, though poor, they are hospitable…Unlike most other independent border tribes, the warriors have had the good sense to avoid, to a large extent, internal feuds and their unity as a tribe is proverbial. Of the Wazir, said Edward, it is literally true that his hand is against every man and every man’s hand against him”. [15]

However, their rival tribes assume the Wazir to have been niggards and keep a low living standard. They are expansionist in nature and utilize their nomadic life to serve their expansionist designs. The rival tribes of Wazir may attribute them any name, I must say, their wisdom, sagacity, unity and oration have no parallel in the comity of the Pashtun tribes.

Mahsud/Maseed

Mahsud are the descendants of Karlanri and the cousins of Wazir. They live in South Waziristan and come down in the family tree of Kakay/Lalay, the grandfather of Mahsud. Mahsud are further divided into Behlolzai and

Alizai named after the two sons of Mahsud, namely Behlol and Ali. Later on, the concept of 'Dray Maseed' developed that includes Behlolzai, Alizai and Shaman khel (descendant of Ali) which has played formidable role in the history of Pashtuns. These three branches of the Mahsud family tree have further grown into many small branches whose detail seems to be unnecessary at this stage.

Mahsud live in the mountainous region of South Waziristan stretching from *Makeen* in the West to *Jandola* in the East. Mahsud are 18000 in strength in accordance with the census of Ahmad Shah Abdali (Caroe: 258). They are fearless, chivalrous and intrepid Pashtuns and love freedom. They are proud, highly inflexible and stubborn as well as lively and open-hearted. They would dance to the beat of a drum and laugh at their own weakness. Though they are not religious fanatics, yet they have due regard for their religious personalities which is evident from the position of Muhiuddin alias Mullah Pawanda who had extensive influence on the tribe and had left a deep impression on the friends and foes alike. They have vehement tribal bond and turn fanatics if their freedom is pervaded.[16]

Olaf Caroe has tried to distinguish the Mahsud from Wazir in these words: "The nearest I can get to it is like Mahsud to a Wolf, the Wazir to a Panther. Both are splendid creatures; the Panther sly, sleeker and has more grace. The Wolf-pack is more purposeful, more united and more dangerous". [17]

The rival tribes of Mahsud perceive them aggressive, short-tempered and credulous; therefore, they can be ruse easily by a simple praise of good words. The rival tribes contend that Mahsud are suffering from superiority complex; therefore, every Mahsud thinks to be matchless. They are also alleged to have been cruel and oppressors as they are born thieves and dacoits. They are also said to have been unreliable and opportunists. Richard Issaq Bruce writes, “The popular idea, but a very erroneous one, is that all Mahsud are incorrigible robbers and live on their ill-gotten gains. There never was a greater mistake than this. The majority of the tribesmen are well-skilled and industrious cultivators of the soil and clever and keen traders and it is only a small minority who live by plunder”.[18]

Call him by any name, I would say, his love for freedom, his manful conduct, his bravery and his plain and straightforward behaviour overshadow all his weaknesses and make him outclass among the Pashtuns.

Dawar

Dawar is the second largest tribe of North Waziristan. They belong to Karlanri branch and are the descendants of Shitak. Originally, they were the inhabitants of *Shawal* but they moved eastward and settled along the bank of Tochi valley. They are 12000 in strength as per census of Ahmad Shah Abdali (Caroe: 258). Dawar are extremely homogenous among the Pashtuns in all respects; however, they are geographically divided into upper and lower Dawar. They live in the most fertile land of North Waziristan along the beautiful Tochi Valley, which is

immensely rich in vegetables, fruits and other crops. Most of the people, especially male are educated and have a due share in bureaucracy and other government machinery. Besides, they have wide range trade and transport businesses at local and national level.[19] If Wazir and Mahsud are panthers and wolves as Olaf Caroe call them, Dawar are the eagles, for they are fearless, tenacious and high flyers.

There exists a historical mistake with regard to Uthmanzai in North Waziristan which needs to be rectified. Both the Wazir and Dawar construe themselves as *Uthmanzai* which seems to be incorrect. The Pashtun genealogy of Olaf Caroe indicates Dawar as the descendants of Shitak, the real brother of Sulaiman and Wazir as the son of Sulaiman; thereby he comes to be the nephew of Shitak and the first cousin of Dawar. The genealogy also shows Uthman as the grandson of Wazir and Dawar. Question arise how Wazir and Dawar turn to be *Uthmanzai*; why this myth emerged among the people of North Waziristan; and who benefit from whom and how? Besides, why did the Britishers replace the name of Tochi Agency by North Waziristan is a question that haunts one's mind? It is argued that as the Wazir were in majority in Tochi Agency; therefore, it was called after their name. But this argument goes opposite in South Waziristan where Mahsud were in majority; therefore, the agency should have been named after the Mahsud tribe.[20]I would leave it to the historians and sociologists to discern how Dawar turned to be *Uthmanzai* and when?

Dawar are educated and social in daily life but they are emotional, short-tempered and short-sighted. They jump into conclusion and think after they leap. They lack unity in their ranks and files and have malice against one another. They become at one and call *Cheegha* if needs but get dispersed soon to fight the evil to the logical end. They are simple and straightforward. They are committed to their cause and prone to religion; therefore, their sentiments have invariably been exploited by the vested interests in the name of religion. They have extreme love for *Pashtunwali* and *Riwaj*, therefore; *Pashtunwali* sways over their religion. Nevertheless, they have no parallel to Wazir in the council of elders and eloquence in oration. They hold *jirga* indeed, which always falls prey to quarrel and disorder. They do not trust their elders and blame them for espionage to the Political Agent just for peanuts incentives.

Dawar as a tribe have been castigated by the British historians and administrators and have been called as a coward and submissive for reasons that might be known to them, but I beg to differ with their observations which seem to have been prejudiced. They can be peace-loving, social and cultured people on account of their education; they would have soft and flexible disposition due to climatic conditions and green Tochi valley; and maintain deep linkages with the government of the time due to the existence of all governmental machinery and installations in their homeland but calling them cowards and submissive leads absolutely to the negation of historical facts. It was Dawar tribe indeed, which gave asylum to Hajji Mirza Ali Khan when he launched a movement against the Britishers, though he belonged to a Wazir tribe. That is why he came to be known as Faqir

of Ipi, a person who had no residence of himself but was provided by the Ipi village of the Dawar tribe - a village just at a stone's throw from the *Kajori Gate* (entrance to North Waziristan). In fact, he was flanked by Dawar's *mujahidin* during his entire movement. I think this might be the reason that the British administrators wrote prejudiced against the Dawar tribe.[21]

Orakzai

The origin of Orakzai is somewhat obscure; therefore, the local traditions about the genesis of this tribe vary to a greater extent. It is said that there were three brothers, namely Afridi, Wazir and Warak who came from Afghanistan to the present abode of the Orakzai tribe where they were at feud with one another over a trivial matter. Afridi went to North, Wazir to South and Warak remained in the same locality where he lived. Another tradition associates the name of Orakzai tribe with Sikandar Shah, an exiled/lost prince from Iran who took refuge in Tirah area where he rose to the position of a Nawab (baron) after many adventures. He married there and ruled over Tirah; therefore, the tribe came to be known as Orakzai, means lost son. Thus, one can say that Orakzai is a lost Persian Royal family.

The Orakzai Agency was previously a part of the frontier region of Kohat district and was announced as a Tribal Agency by the then Prime Minister, Zulfiqar Ali Bhutto on November 3, 1973. The Agency is bordering with North Waziristan in the South West, Kurram Agency in the West and Khyber Agency in the North. Orakzai Agency inhabits certain non-Orakzai tribes such as Ali khel, Mullah khel,

Mishti and Sheikhan which have amalgamated themselves into the Orakzai tribe for all intent and purposes. Some of the sub-tribes of Orakzai such as Mosazai and half of Lashkarzai live in Kurram Agency for historical and administrative reasons. A small Bangash tribe of Biland khel, though makes a part of the North Waziristan, has been attached to Orakzai Agency for the same reasons. The Orakzai tribe has many sub-tribes and clans whose details have no need at this stage.

Orakzai are staunch Pashtuns and strictly adhere to the Pashtuns code of conduct. They have a strong predilection to religion and are divided into Sunni and Shia sects. They are first Pashtuns and then Sunni and Shia, for their religion is also influenced by *Pashtunwali*.[22] They are hospitable, brave and fiercely freedom lover. Referred to Macgregor, Colonel H. C. Wylly writes, “there is no doubt that, like other Pathans, they would not shrink from any falsehood, however atrocious, to gain an end. Money would buy their services for the foul deed; the cruelty of the most revolting kind would make their actions to a wounded or helpless resistance.” He further says, “As soldiers they are, in general, quiet, well-behaved and intelligent, responding easily to discipline”.[23]

Turi and Bangash

Kurram Agency has taken its name from river Kurram instead of any tribes. History unveils that Kurram Agency has experienced many vicissitudes - political, social and religious. Kurram Agency inhabits many major tribes such as Bangash, Turi, Orakzai, Zazai, Mengals, Gilzai and Parachamkani. The Bangash of Kurram Agency are said to have been the original dwellers of the area that trace their descent from the Quresh tribe of Arabia. They were driven out of Kurram by the occupation forces. In the days of Humayun, the Mughal king, Kurram fell to Bangash tribe again after wandering for nearly two centuries through Southern Punjab, Bannu, Waziristan and Khost.

Bangash is said to be a Persian word that means the 'root destroyer or to tear apart', which is believed to have been attributed for their fierce fighting in the battlefield. The Bangash claim that they are the descendants of Ismail who came from Sulaiman Mountains and link their blood-linage to the eleventh generation of Hazrat Khalid bin Walid, the famous Muslim General. Some scholars call them Karlanri Afghans. They speak soft dialect of Pashto. They are brave and hospitable as appears from its tribe's name. They adhere to *Pashtunwali* and follow the Kurram Riwaj. They are divided into Sunni and Shia sects.[24]

The origin of Turi is quite unknown in history. Mohammad Hayat Khan calls them Karlanri Afghans while Lumsden attributes them to Mughal extraction. Ibbetson regards them as Tartar who accompanied Chengiz Khan and

Timor in their Indian raids. Herbert Edwards calls them Hindki race.[25] The Pashtun genealogy of Olaf Caroe shows the Turi tribe to be the descendants of Ghurghusht Pashtuns of the Kakai branch of the Karlanri tribe. They are actually the descendants of Khugi, the grandson of Karlanri from Koday. However, the Turi themselves claim their descent from a Turkish family headed by Toghani who came from Persia along with his Persian wife and settled in Aryoba, Afghanistan. In winter they would take their flocks and herds down the country up to Nilab on the River Indus near Attock. They would live a nomadic life and would migrate to Kurram valley in summer. This theory of the Turi origin also seems to be correct as their profession of the Shia religion provides a tenable justification in this regard. It must be mentioned that history does not accept them as true Afghans, although they are Pashtuns and follow *Pashtunwali* and *Riwaj* in letter and spirit.

Turi are brave, hospitable and social people. They are fierce in battle but affable and loveable in social life. They are secular indeed but have great respects for the Sayyeds etc.[26] Colonel H. C. Wylly refers to the Oliver's account as, "They are not very big or good-looking, and have somewhat of the look of savage about them but they are strong, hardy and compact and are essentially horsemen, as Wazir in spite of their well-known breeds of horses, are essentially footmen."[27]

The Bangash and Turi flanked by other tribes of Kurram have codified their *Riwaj* and follow it in collaboration with the political administration of Kurram Agency.

Afridi

Afridi trace their origin to Karlanri. They speak the hard dialect of Pashto. The Pashtuns pronounce them as Afridi (plural) and Afriday (singular). Afridi are the custodian of Khyber Pass. They are surrounded by Shinwari in the North, Khattak in the East, Bangash and Orakzai in the South and Turi in the West. They are divided into several sub-tribes and clans and sub-clans whose detail is not required at this stage.

Afridi are said to have been settled in 14th Century in this area but the account of the Herodotus make this theory incorrect as he refers to people called Aparytae who lived around Kaspaturos (Peshawar) at that time. He further mentions that Afridi tribe offered stiff resistance to the Greek army while passing through Khyber Pass. In fact, they are brave, intelligent and ferocious people among the Pashtuns. They forced every invader to pass through Khyber Pass subject to payment of toll. The history of legendry Ajab khan Afridi has further added beauty to the history of Afridi tribe. The British writers have called them faithless of the faithless and the most fierce and stealthy enemy on all accounts. They are said to be wily, mistrusting, wolfish and wilful savage with no other objective except robbery and murder and the feuds they give. Their ignorance and barbarism are a bye-word in the neighbouring tribes.[28]

Colonel H. C Wylly while referring to James W Spain's account of Afridis says, their traditions lead us to believe they are the descendants of Khalid bin Walid. According to another tradition, they are supposed to be the descendants of Maimana who had two sons, Afridi and Adam. Wylly describes Afridis as, "Afridi in appearance is generally fine, tall, athletic highlander, whose springy step at once denotes mountainous origin. They are brave and hardy to be made soldiers, but are apt to be somewhat homesick in hot weather….The Afridis are the most avaricious race desperately fond of money. Their fidelity is measured by the length of the purse of the seducer and they transfer their obedience and support from one party to another of their own clansmen according to the comparative liberality of the donation."[29]

Notwithstanding, all ill-talks of colonial officers about the Afridis, their intelligence, bravery, love for freedom and *Pashtunwali* have no match among the Pashtun tribes. They are handsome, hospitable, generous and devout Muslims and follow *Pashtunwali* rigidly. I think the Britishers couldn't sway over the belligerent Afridi tribe; therefore, they spoke ill of them to malign them among the comity of the Pashtun tribes.

Mohmand

Mohmand are the descendants of Ghorya; therefore, they are also known as Ghorya khel. Ghorya had four sons namely, Zerani, Chamkani, Khalil and Dolatyar (the father of Mohmand). The Mohmand tribe got its name after him. The Mohmand tribe has geographical division. Mohmand who live in the plains around Peshawar are called

Mohmand Payan (lower land Mohmand).Mohmand who live in the highlands are called Mohmand Balai and live in Mohmand Agency of FATA and Ningarhar of Afghanistan. Mohmand are further split up into many *khels* which are available in the history books on Pashtun tribes.

Mohmand are said to have come from Kandahar in 14th century. They pushed the Dalazaks and occupied their land. They speak hard dialect of Pashto.

Mohmand are very hard and tenacious people among the Pashtuns. They are simple, straightforward, hospitable, brave and devout Muslims. They live in mountains; therefore, they are fond of fertile land. They are poor indeed but they are hard-working and can convert a barren land into a cultivable land. [30] Oliver says of Mohmand that "in physique, though there among them fine men, they are as a rule inferior to many of the surrounding Pathans; and they have on occasion fought well against us, their courage is decidedly open to suspicion". [31] The rival tribes of Mohmand call them selfish and opportunist, disloyal and non-trustworthy. Whatever the contention of the rival tribes may be, they are staunch Pashtuns and follow *Pashtunwali* and *Riwaj* in letter and spirit. They have gallantly fought against their enemies throughout history and have proved their worth in the battle field.

Apart from the afore-mentioned tribes, Bitani tribe of South Waziristan, Shinwari tribe of Khyber Agency, Uthman Khel tribe of Mohmand and Bajaur Agencies and Tarklani tribe of Bajaur Agency have considerably contributed to the *Riwaj* of the tribal areas.

1.3. Meaning of Riwaj

Riwaj is an Arabic term which refers to customs and usages prevalent in the society. It has many synonyms in Arabic and Urdu and is being used interchangeably or in combination with other synonyms such as *Rasm, Adaat, Uruf, Narkh, Layar*, *Rasm-o-Riwaj* and *Narkh-o-Adaat* etc. having different connotations with regard to customary variations prevailing in different tribal areas. *Rasm* is also an Arabic word which means prevailing practices, habits and legal applications. *Adaat* refers to a condition caused by the repeated actions of an individual or group of individuals which are adopted and recognized by the society. *Uruf* (plural Maaruf) is an Arabic word refers to *adaat* (habits) and practices developed by the Arab society before Islam to run their socio-economic and legal affairs. Like the tribes in the borderland they also had no central authority to maintain social order under statutory laws and had adopted Riwaj mechanism of conflict resolution to which Quran has also referred to time and again. Thus, pre-Islamic practices beneficial for the maintenance of social order at the dawn of Islam were commanded to be followed, provided they were not repugnant to the teachings of Islam.[32]

In some parts of the Pashtun tribes, *Riwaj* is called *Narkh* – means price the tribesman pays for the wrong he commits. Thus, the process of determining the price of a wrong by the elders of the council is called *Narkh.* For instance, if a tribesman commits a murder he pays the price either in the form of a blood or blood money - a compensation paid to the victim's family which happens very rarely in Pashtun society. This *Narkh* (price) is a two-

way traffic. In accounting language, I would say, it is based on the concept of payables and receivables. In some tribes the term *Layar*, means path, is used for Riwaj. In legal language, *Layar* would mean the path/method/application/procedure/precedent that can be followed or used in the dispute resolution. For instance, the tribesmen say, *layar tera do,* means that already a path has been stretched / built to be used/followed.

In this context *Riwaj* may be defined as, the habits, customs, prevailing practices, methods and precedents' accepted and recognized by the tribesmen through which disputes are resolved and social order maintained in the absence of any formal legal system and writ of the central authority. Malik Abdul Ghanoor defines *Riwaj* as, "the social actions undertaken or verdicts issued by the elders of the council by which the dispute gets resolved and the social order maintained until broken by the criminal action of the disputant or the social action of another council of elders constituted on the appeal or objection of the disputant". [33] However, the amended Frontier Crimes Regulation defines *Riwaj* as, "the usages, traditions and customs of the tribes that are in vogue in the Federally Administered Tribal Areas".[34]

Riwaj can be distinguished from the common law in the sense that in the former disputes are decided by the folk's *jirga* in the non-protected areas and the official *Jirga* constituted by the political officer in the protected areas, while in the latter disputes are decided by a jury. However, both have a common genesis in the social customs, usages and prevailing practices on the basis of

which the council of elders and the jury decide cases; hence, they are different from the statutory laws enacted by the legislature in its nature and application.[35] The legal experts define Common laws as, the principles and rules of action, embodied in case law rather than legislative enactments, applicable to the government, protection of persons and property that derive their authority from the community customs and traditions that evolved over centuries as interpreted by judicial tribunals. The Common law system prevails in England, the US and other countries colonized by the British Empire.[36]

Riwaj is the centuries' old socio-cultural and legal norms evolved by the tribesmen to lead their lives accordingly and settle their disputes in a peaceful and just manner. These customary laws are totally un-written and are based on the collective wisdom and consciousness of the elders of the tribes and have been transmitted to their posterity through genetic process and symbol codes. It is a common Pashto proverb, **De watana wowza kho da Narkh na ma woza**, which means that you can give up your tribe or homeland but you cannot give up the *Narkh*. This signifies that *Riwaj/Narkh* has overwhelming effects on the lives of the tribesmen and goes cheek by jowls with the tribal life. About *Riwaj* Ghani Khan Writes, "you call it law and keep it in big books. He calls it custom and keeps it in his wife's treasure chest. You have to be either a judge or criminal to know your law. He knows his customs before he knows how to eat. It is bred in him. He doesn't have to go to a learned man in a wig to know the law against which he sinned. He knows it as soon as he

does it. He is his own judge and jailer. His ancestors have seen to it that it is so".[37] If a dispute arises between two tribesmen, the plaintiff sends elders of the councils to the defendant to convey his message, '***Da Kanrhi Saloor Makha Di Che Pa Kama ye Haal Kawal Ghwarhi',*** means the tribesman can resolve the dispute in accordance with any of the four facets of a 'Stone' that literally means resolution of dispute either by *Sharia* or *Riwaj*, *Daftar-i-Sultani* (Government rules) and/or finally gun. In addition, the tribesmen believe in four creeds of Islam viz, Hanfi, Shafi, Malki and Hanbali; therefore, they call *Riwaj* the 5th religion which is the creed of their forefathers.

Riwaj plays a vital role in the growth and development of the socio-cultural life of the Pashtun's society. It has binding effects on the Pashtuns as it governs and guides the conducts of the Pashtun tribes, build their character and cause discipline and order in their lives. *Riwaj* has overtime assumed a key role next to *Pashtunwali.* The decision made by the elders of the Pashtun tribes through the council of elders in accordance with *Riwaj* has taken the place of written laws in the tribal areas. In this backdrop, *Riwaj* means the process by which the Pashtun tribesmen resolve their disputes arising out of the prevailing usages, traditions and habits that have deep roots in the tribal life.[38]

1.4. Salient features of Riwaj

Riwaj of the tribesmen has certain salient features which differentiate it from the statutory laws and keep it alive despite its inconsistence with the latter:

Acceptance and recognition

The acceptance of *Riwaj* by the tribesmen and the perception of reciprocation of benefits from each other's behaviours give a solid recognition to *Riwaj* as a viable legal system. *Riwaj* has no need of any strong individual or institution to enforce the decision made by the council of elders. Its wide acceptability and recognition indicate that every tribesman considers it as his duty to abide by its laws and adheres to its applications and procedures. Any deviation from *Riwaj* by any tribesman can lead to a social disorder in the society whose effects engulf the entire tribe to which he belongs to. Thus, each tribesman behaves in accordance with *Riwaj* and expects the same from other tribesmen.

Offences are not treated as crimes

In *Riwaj* offences are treated as private wrongs or injuries rather than crimes. The state authorities cannot take cognizance of the offence committed by the tribesman; therefore, the tribal society takes collective action against the perpetrator if the offence has bearings on the society as a whole. The joint action of the tribe against an individual or a *khel* has more effects than the force used against a crime by any state institution. In a formal legal system, the criminal may be arrested and sentenced to jail, but in a tribal society, a *Lashkar* is raised against the individual or *khel* that can impose fine on the tribesman, raze his house to the ground and banish him from the *tribe/khel* if a social boycott is announced against him.

Nevertheless, if the offence is individual-specific, then the victim has the right to take revenge publicly so that his honour may be restored and he may avert the *paighore* of his *tarbores*. It is noteworthy that, with the enforcement of Frontier Crimes Regulation in FATA, this concept has undergone changes. Now the criminal may be arrested, punished and fined if he commits any crime on the *Tora Lika* or in the Bazaar (protected area).

Avoidance of violence

Riwaj is a legal system that believes in peace and non-violence. If a dispute arises between the tribesmen, the matter is referred to the council of elders which finds way to arrive at a peaceful solution. *Riwaj* perceives violence as an expensive way of dispute resolution in terms of money, precious human losses and social disorder in the society; therefore, the elders of the tribe leave no stone unturned to bring the warring factions to negotiation and settle the dispute amicably. However, the elders of the council have no power or authority to impose their decision on the disputants and try to persuade and make them agree to the solution which is mutually acceptable to the agrrieved parties. In a matter of public importance, sometimes situation takes ugly turn and leads to violence against which *maraka* is convened to take collective action against the oppressor and cruel.

Enforceability of the Jirga decision

In *Riwaj* the decision made by the council of elders can be easily enforced with the help of *Riwaj* procedures, applications and collective action of the community. The disputants agree to the verdict of council of elders because they know that the elders of the council desire peace between them; that they have given *Wak* to the

council of elders; that the elders of council have obtained *Baramta* from them which can be confiscated in case of non-compliance; and finally they can be declared as outcaste by the *khel*/tribe.

Flexibility in Riwaj

Riwaj seems to be mild and flexible and can easily be moulded by the elders of the council to make it adaptive to the prevailing conditions of the tribesmen. In formal legal system, a decision of the court can be presented as precedence in any other identical case on the basis of principle of consistency. *Riwaj* follows the same principle for which the term '*Layar'* can be used. However, if a departure is made by the elders from the previous application or procedure, it turns to be a new *Riwaj* until changed by the elders again with the passage of time. It is pertinent to mention that *Riwaj* undergoes changes in relation to socio-economic changes of the tribesmen rather than the whims and wishes of the tribal elders. *Riwaj* is also incremental in nature. The elders of the tribes also make *Riwaj* or change it when a difference of opinion exists on an issue or the existing *Riwaj* does not envisage a solution to the emergent problem. Nevertheless, the new *Riwaj* must be recognized and accepted by the majority of the tribe and cannot be enforced coercively on the tribesmen. In the protected areas, the decision of the council of elders constituted by the Political Agent is enforced by the political administration; however, appeal can be filed to the Commissioner and the FATA tribunal against the verdict of the Political Agent.

Cheap and speedy way of justice

Riwaj provides an informal legal system through which a cheap and speedy justice is delivered. The complainant/claimant/plaintiff has easy access to the deliverers of justice-the elders of the council who summon the disputants being fellow-tribesmen and settle the disputes in a sitting or two. In most of the cases, the elders of the council work for free with the intent of keeping peace and harmony in the tribe/khel. However, some disputes turn expensive due to the stubborn behaviour of the disputants, which the elders of the council enjoy on their part. I have seen disputes in which sheep and bullocks were slaughtered and served to the elders of the council. Millions of money is spent in order to win the case and down the *tarbore*. In such a situation, the dispute turns to be a white elephant, but this might be exceptional and happens when the dispute takes the shape and form of the tribal character.[39]

1.5. Dimensions of Riwaj

Apparently, *Riwaj* has two broad dimensions which build the entire edifice of *Pashtunwali.* One dimension of *Riwaj* portrays the norms and values embodied in *Pashtunwali* which are otherwise called the elements of *Pashtunwali* such as *Nung* (honour), *Paighore* (taunt), *Melmastiya* (hospitality), *Hujra* (public guest house), *Badal* (revenge) etc. In other words, the rituals, performed by the tribesmen within the ambit of *Pashtunwali*, have assumed the form of *Riwaj* which is the hallmark of Pashtun tribal society. These rituals may include the institution of marriage, keeping of dress code at a particular event,

death ceremonies, familial relationship, women and children's rights and other social-cultural activities. The other dimension of *Riwaj* provides for dispute resolution mechanism - disputes which crop up as consequence of application of these socio-cultural norms among the tribes. For instance, a woman is an honour of the family/tribe that, if dishonoured or molested by a tribesman, turns contrary to *Pashtunwali* and causes a dispute between the families/tribes of the individuals. The same dispute is resolved through *Jirga* which is a tool of the dispute resolution mechanism in *Riwaj*. It signifies the cause and effect relationship between the two dimensions of *Riwaj*. It is noteworthy that *Riwaj* should not be confused with *Pashtunwali*. The latter is like a loose organization that provides a skeleton and put certain restrictions on the workforce and defines limits for. The restrictions and limits of the organization are the elements of *Pashtunwali* which every Pashtun has to honour and uphold. The organization develops certain norms, values and frames rules and regulation which are binding on the workforce to adhere to. Any deviation from the set values and framed rules can cause material loss to the organization. These norms, values and framed rules are the customary laws - *Riwaj* which the Pashtun society has evolved over-centuries and lead their lives accordingly. Any deviation from these values can cause material loss to the individuals, families, *khels* and tribes in the Pashtun society. In other words, *Pashtunwali* provides for the general principles of policy that guide the tribal life while *Riwaj* is the embodiment of recommended practices that govern the tribal society and are mandatory to be adhered to. Moreover, *Pashtunwali* is rigid in nature. A Pashtun fails to remain a Pashtun if he does not

fulfil its obligations and fail to follow its dictates. *Riwaj* is somewhat mild and flexible and changes at times with a change in socio-economic development of the Pashtun tribes.[40]

Riwaj is a broad term touching upon the multifarious facets of tribal life. Here it is restricted to the conflict resolution mechanism it has provided to the tribal society as a consequence of which a cheap and speedy justice is delivered. However, the dimension of *Riwaj* that pertains to the elements of *Pashtunwali* has been dilated upon at length in the subsequent section of this chapter so that the cause and effect relationship can be established between the two dimensions with the help of applications and procedures of *Riwaj.*

1.6. Evolution of Riwaj

The evolution of *Riwaj* in general and the tribesmen of the borderland in particular is as obscure as the origin of the Pashtuns in the annals of history. How did *Riwaj* evolve, who was its progenitor, how did the scattered tribesmen gathered to set such parameters of social life at times when men were living in dark ages of human civilization and how did it spread to the rest of Pashtun tribes are the questions which are so difficult to be answered as the history of Pashtuns has been silent in this regard. The researchers and scholars need to focus on this aspect of the Pashtuns.

To me, the evolution of *Riwaj* can be divided into two phases. In phase one I would describe the evolution of *Riwaj* in the light of Pashtun's origin in order to determine the chronology of *Pashtunwali/Riwaj*. In phase two, I

would focus on evolutionary developments that occurred in Riwaj in different periods. Let's have a cursory view of the evolution of *Riwaj* in the light of the scholastic viewpoints and historical events as under:

Maulana Abdul Qader describes the evolution of *Riwaj* in a very logical manner and says that in prehistory social phenomenon, men were living in caves and had their own concepts of things around them. When they came out of caves they must have had their emerging aspirations, passions as well as difficulties which would have been dealt with accordingly by making remedial laws and developing ways by the people of wit and wisdom of that time. He refers to the verse of the Holy Quran and says, "There was no nation in the world wherein a Messenger was not sent to scare them from the wrath of God". He argues that the Pashtuns also determined ethics, morals and socio-cultural norms which they named as *Pashtunwali* or Pashto and remained intact up to this day. He further mentions, "When Islam as a religion and Islamic Sharia as law reached the Pashtuns' areas, they found close conformity between Islam and *Pashtunwali* and embraced Islam as religion en bloc. That's why no other religion except Islam secured such a place in the Pashtun's homeland. Hence, all newly born Pashtuns must be Muslims".[41] In this context, I recall the odd concept of one of my university fellows who contended that if it is true that Adam was thrown down from heaven on the mountainous region of South Asia, then he must have come down in a territory where the Pashtuns live today. He continued to maintain, if we make mountainous territory as a threshold for his destination on earth he

must have been the first human as well as Pashtun to step on the surface of earth to which, I think, Dr. S. Iftihar has also referred to in his book, “Some Major Pakhtoon Tribes along the Pak-Afghan Borders”. I must say sociologists and anthropologists would disagree with this bizarre concept of evolution of Pashtun’s origin as we have no empirical evidence in support of this view.[42].

Pashtunwali, which can be called the Magna Carta of the Pashtun nation, provided foundation to the evolution of *Riwaj*. As I said earlier, the evolution of *Riwaj* is difficult to be supported by empirical evidences; however, if the theories of genesis of the Pashtun society are analysed, one can build up a case for the evolution of *Riwaj* by relative comparison based upon the characteristics of the social customs that exist between the Pashtuns and their so-called progenitors. For instance, if we think for a moment and link up their origin with the lost tribes of Israel we need to figure out the common social behaviours and practices of the Pashtuns and Jews. Dr.Taj Muhammad Wazir refers to the observations of different writers on Pashtuns and writes that like Jews the Pashtuns wed to the widows of their brothers and don’t give share in property to their daughters. They are as tall and sturdy as Jews and their Qazi *(mullah)* looks like a Jew. If a Jew comes across a Pashtun and sees his hair colour and style he would claim to have met his kin. Dr.Taj Wazir refers to Henry Raverty and mentions that the Pashtuns being progeny of Jacob (Hazrat Yaqub) maintain the same mores despite lapse of twenty five centuries. Their turbulence and restiveness, their malice against one another, their commercial and business

acumen and their tendency to vested interests signify that they are the remnants of the 10th lost tribes of the Jews.[43]

The Israelite theory can be traced back to the prophet-hood of Abraham (Hazrat Ibrahim -1900 BC). It is said that Abraham left Mesopotamia (present day Iraq) for Canaan (present day Palestine). Abraham abandoned Idolatry and started worshiping one God. As a result, God bestowed him with prophet hood and was promised that his descendants would become the custodians of Canaan. His two blessed sons - Isaac (Hazrat Ishaq) and Jacob (Hazrat Yaqub) also received similar promises from their God which came to be known as Patriarch in history –means the forefathers of Judaism. Jacob, who was also called as Israel, is said to have had twelve sons the descendants of whom are called the twelve tribes of Israel. They had left Canaan for Egypt due to severe drought in 1750 BC. They returned from Egypt under Moses in 1250 BC due to unbearable persecution at the hands of the Pharaoh (Firghaun). It was during this period that God revealed the "Ten Commandments" upon Moses. The Jews look upon it as the birth of the Israeli nation in the history of mankind. Moses couldn't reach Canaan and died on his way near Mount Nebo, Jordan. He was succeeded by Joshua (Yusheh) to lead the Jews to their Promised Land, Canaan who took it back with no too much pain.

Joshua had no competent successor to maintain his conquests. Disunity erupted among the Jews and began to quarrel for power. Samuel, a military lord of Joshua assumed the reins of power whose period was known for fratricidal war. Ultimately, the tribal chiefs decided to

cease war and establish Monarchy. Saul (Talut), a priestly prophet and Judge was chosen to rule the united Israel. His period was a time of prosperity and happiness for the united Jews. He was succeeded by his promising heir, David (Hazrat Dawood) who expanded the Israelite kingdom up to the bank of river Euphrates (Iraq). He also occupied the city of Jerusalem which he declared as his capital in 1000 BC. His son Solomon (Hazrat Sulaiman) furthered his cause and annexed other principalities into his Kingdom. His period is known in history as the Golden Age of the Israelites. After the death of Solomon in 922 BC, the Jewish state started stumbling and split up into two groups. Ten tribes grouped together to make Northern Israelite kingdom and the two tribes of Judeans and Benjamin made the Southern kingdom of Israel. However, both the Kingdoms of Israelites didn't withstand the force of the Assyrians and Babylon. The Northern Kingdom lost to Assyrians in 721 BC and the Southern Kingdom was obliterated by Nebuchadnezzar (Bakht Nasr) in 6 BC. The ten tribes of the Jews were said to have exiled and moved towards Hejaz (now Makah in Saudi Arabia) and *Ghor* (now a part of Afghanistan). The latter started fierce fighting with the local people and gradually occupied Ghazna, Kandahar and Kabul.[44] Khan Abdul Ghani Khan writes, "Most people look at his nose and say he is a Jew. Because they cannot link him with anyone else, they say he is one of the lost tribes. His Islamic faith and its inevitable influence on his life and manners, give certain plausibility to this impression".[45]

This shows that the evolution of *Pashtunwali/Riwaj* can be traced back to the reign of David (Hazrat Dawood). The social customs, they held at that time, handed down from generation to generation and eventually assumed the form of *Pashtunwali* perhaps after considerable impacts of the Indo-Aryan and Iranian languages. We can also conceive the chronology of evolution of *Riwaj* since the lost tribe of the Jews migrated to *Ghor* in the 6th century BC where they lived in hills *(Pusht/Pukht)* and came to be called as Pashtun, means people of the hills. Their social customs would have assumed the shape of *Pashtunwali/Pakhtunwali* after getting influence from the Indo-Aryan and Iranian dialects.

The Israelite theory ceased to exist with the conversion of Abdur Rashid alias Qais to Islam who was the descendant of King Saul in the 37th generation. He was said to be the chief of the Pashtun tribe in *Ghor*. He visited Medina along with his fellow tribesmen where he married Sara, the daughter of Khalid bin Walid and accepted Islam. He bore three sons - Ghurghusht, Saraban and Bitan who are construed as the progenitors of today's Pashtun tribes. If we link up the Pashtuns' origin with Qais and his three sons, we determine *Riwaj* to have evolved in the first quarter of the 7th century when Abdur Rashid alias Qais led a *jirga* of the Pashtuns to Medina. They found close congruity between Islam and *Pashtunwali* and embraced Islam as their religion.[46]I beg to slightly differ with this view on the ground that if Qais was a Pashtun chief of *Ghor* prior to his conversion to Islam, it signifies that Pashtuns and *Pashtunwali* existed before the advent of Islam.

The evolution of *Riwaj* can also be highlighted in the context of the Indo-Aryan theory of the Pashtun's origin. The Indus valley civilization was replaced by the glorious Aryans in the annals of history. I don't want to fall into the tangle of the genesis of the Aryans here; however, I must say that historians and anthropologists are unanimous on one point that the Aryans were Europeans originally but migrated to Asia through Iran (some say through Russia) and ultimately settled in the sub-continent (today's India and Pakistan). To build up a case of evolution of *Riwaj* we need to understand the shared values of the Pashtuns and the Aryans, albeit that must be different from today's Riwaj. *Arya* means literally a free born man of a noble character which is the prime characteristic of Pashtuns as evident from the elements of *Pashtunwali.* Family was the basic social unit and was the nucleus of social life. The social fabric of the society was patriarchal and male dominated as the Pashtuns maintain today. The father would have great love and affection for his children but would be hard and cruel at times which make a significant part of the Pashtun's family life. Women maintained honour and dignity in the society and would rule the roost at home but were expected to keep their chastity at all cost. Besides, they believed in caste system which came down to the Hindus as a die-hard social stratification system and remained intact for centuries. In fact, the division of the society into Brahmans, Kashtriyas, Vaishyas and Shudras was the brainchild of the Aryans and was adopted by the latter Hindus.[47] The exponents of this theory contend that the Pashtuns were also Hindus by religion before their conversion to Islam. The concept

of the caste system existed among the Pashtuns since then but it would have subsided with the advent of Islam as the names of the social groups in Hinduism have no signs of existence in the Pashtun society. However, the caste system was not rooted up in totality and emerged in the form and manifestation of occupational groups such as barbers, drum-beaters, carpenters, potters etc. whom the Pashtuns look down upon as people of low caste and low blood. Besides, the Indo-Aryans used to practise a sort of *Jirga system* with two types of councils to which they called *Simite* and *Sabha*. *Simite* was the council of the chiefs of different clans while *Sabha* was the council of the elders in rural areas.[48]Dr. Hanif Khalil refers to the book of Jens Enevoldson, 'Sound the bells, O moon arise and shine' and writes, "Actually the tribal code is the old Aryan code of honour, which one may find in force in the early stages of all Indo-European peoples. Take the old Scandinavian sagas and change geographical and personal names and you have an Ipic tribal history of the Pakhtuns. Particularly in the Tappas – which are mostly composed by women–we find descriptions of ideal manhood, and the virtues–honour, bravery, justice–which the young girl would look for in her beloved, are the old Aryan virtues". [49] This indicates that the evolution of *Riwaj/Pashtunwali* has roots in the Aryan society which came from Iran or Central Asia through Khyber Pass in 1500 BC. Thus, *Riwaj/Pashtunwali* seems to be almost four thousand years old that has handed down to the Pashtun tribesmen and exists in today's form in the tribal areas.

As have said time and again, the origin of the Pashtuns is quite obscure and is mostly based on myths and oral traditions; therefore, we need to analyse the Greek theory of the Pashtuns as mentioned in the book, "Histories" authored by Herodotus, the Greek historian wherein he has mentioned the names of the countries, towns and habits of the people in 4th century BC. He describes the names of Kaspaturos (Peshawar), Paktuike (Paktiya), Aparytae (Afridi) and Gandario (Gandhara) etc. that show the existence of the Pashtuns in the present abode. Pactiya was a trans-Indus region during the empire of Darius consisting of four contiguous nations of the Gandarioi, the Aparytae, the Sattagydae and the Dedicae. Gandarioi has been identified as the people of Peshawar valley including *Yousafzai* and Mohmand; the Aparytae and Sattagydae have been identified as Afridi and Khattak most recently; and the fourth nation seems to be the extinct tribe of Dadi, an obscure branch of *Kakar* dwelt on the southern border of the Sattagydae.Having no written history it is difficult to find exactly identical names to these nations/tribes after a lapse of almost two thousand years as attributed by Herodotus. However, the word, Pakhtues used by Herodotus seems quite close in character to Pukhta/Pushta, means hill/ridge [50] of the Israelite theory which might be influenced by Indo-Aryan and Iranian languages and would have transformed to the word Pashtun/Pakhtun. In this backdrop, we can trace the chronology of evolution of *Riwaj* up to 4th century BC. Ghani Khan writes that Herodotus refers to the Pashtuns country as Bactria which was inhabited by small and dark people dealing in gold and spices. They had a system of

trade rights and monopoly during the time of Alexander. He mentions that some friends of Alexander would have stayed among the Pashtun tribes and would have married with the local women. He adds, there are Pashtun tribes that have Greek names; their social customs seem to be Greek in character; they have poets and warriors like Greeks and all their wars are fought over women.[51]

However, Maulana Abdul Qader doesn't agree with the Israelite, Indo-Aryan and Mixed theories of the Pashtun's origin and describes, "Olaf Caroe has collected ample historical information of the Pashtuns from some ancient races such as Saka, Kushan, Sassanid and Huns but the period, which he refers to, is when man was living in a state of nature and was the evolution of human social life. At that time there was no concept of nation, tribe or khel or, he says, it was a period when human civilization was crawling on its knees like a child. Here it grew and expanded from and got antecedence in language". [52] Professor Preshan Khattak also vindicates the perception of Maulana Abdul Qader and mentions that a Pashtun tribe inhabited in the mountains of *Ghor* before the advent of the Aryans, the Israelites and the Greeks. They would spend their lives in accordance with the glorified cults of *Pashtunwali*. They would have borrowed certain best practices and rites from the aliens, but they were none but Pashtuns.[53]About the evolution of *Pashtunwali* Tipu Muhabat khan writes, "It is a historical and evolutionary social process, and not the result of super or externally imposed official edict or legislation. It has various sources

including the collective ethos developed in the face of frequent attacks and safety measures, migratory processes, the unique language, contributions of Sufis and Pirs, influence of the various literati including the poets such as Pir Roshan and Khushal Khan, the code of Sheikh Mali Baba, contribution to literature and folklore of different epics and stories of romances including those of Adam khan and Durkhaney, Yousaf Khan and Sherbano, Sher Alam and Maimoona, and Shahay and Delley, and last but not the least, the rich treasure of various proverbs which are the integral part of the Pathan parlance as well as literature. *Pakhtunwali* is an ancient religious, spiritual, and communal identity tied to a specific set of beliefs, codes, and a linear record of history spanning over five thousand years".[54]

With regard to evolution of *Pashtunwali* Dr. Hanif Khalil quotes Idrees Asar and writes, "A city "Caspatrous" is believed to be today's Kabul and it was in the land of "Pakteeka" which had Gandhara as another part of it; therefore both are one and the same. There is another belief. That Caspatoons, in fact, is today's Peshawar and the argument is the existence of a river by its side. This may be the river of Kabul that flows in Nowshera or may be the river of Bara. All these people have their own history and with the passage of time, have developed cultural values and a well-established code of life in the end. As we have already discussed, a code needs institution and these come into existence after transformation of processes into practices and then institutions emerge for the implementation of the code elements. Afghan-Pashtun society covers all those

aspects of the people, who whether live in a tribal village or in a city. These might have suffered some changes, but these values do exist as a code. The study shows that some of these elements are Pre-Islamic while others are new and we may say that there are Post-Islamic because these were developed after Islam was propagated in this area."[55]

The above description proves that *Riwaj* is a pre-Islamic phenomenon and can't be attributed to the conversion of Pashtuns to Islam and the legendary sons of Qais Abdur Rashid. Nonetheless, *Riwaj* has attained the current status with changes occurred in the global environment which can be referred to as phase two of the evolution of *Riwaj,* being discussed in the succeeding sections.

The evolution of Riwaj didn't halt, notwithstanding its neglect in the annals of history for thousands of years. History reveals that Sultan Behlol (1451-1489) of the Lodhis dynasty would regularly convene *Jirga* of elders to decide certain important issues of the national character and would sit in person along with other tribal chiefs in a circle as *jirgamar* sit today. The Pashtuns resurrected during the reign of the Mughal Kings. Sher Shah Suri defeated the Mughals and raised a Pashtun empire in India. He was a great Afghan King and followed the Pashtun code of conducts rigidly. He would hold a regular *Jirga* and would sit in circle on ground along with the Afghan chiefs. Perhaps it was due to the strong binding force of *Pashtunwali* he had created among the Pashtuns that he discomfited the Mughals and ruled over India. When his successors began to rule as Kings and tried to suppress the tribal elders they lost their indigenous

support because the Pashtun tribes took sides with their Mughal rivals to end their rules.[56]

Riwaj began to solidify its position in the Pashtun society in 14th and 15th centuries. The invincible tribes of the southern borderland, namely, Dawar, Wazir and Mahsud moved eastward in 14th century and settled in their current abodes. These tribes held independent status till the arrival of Mughals and lived in accordance with indigenous customary laws, *Riwaj.* When the Mughals conquered India they also brought the brave and fierce tribesmen under the partial suzerainty of the Mughal rule; however, the Mughal left them independent subject to the payment of revenue to the Mughal Governor at Kabul. Hence, the elders of the tribes devised a system by which the share of profit and loss of the tribes was decided to be determined on the basis of *Nikat.* Since then, the *Nikat* system holds a special place among the said tribes. The *Nikat* system was the embodiment of the concept of collectivism among these tribes which culminated in the form of collective territorial responsibility inserted in FCR and institutionalized by the colonial authorities.[57] About the *Uthmanzai Riwaj,* Sher Muhammad Mohmand writes that more than four hundred years ago Riwaj was devised by the elders of the Wazir tribe in a *Jirga* which was unanimously agreed upon by the elders. The necessity of *Riwaj* as dispute resolution mechanism emerged when a tribesman from Muhammad khel eloped a Shadi khel girl and brought the two tribes on the verge of a bloody tribal war. However, the dispute was resolved amicably. It was decided that in future all disputes would be settled

through Riwaj.[58] This story of Riwaj is being narrated in North Waziristan; however, the names of the tribes mentioned by Sher Mohammad Mohmand seem to be incorrect. They are actually the sub-tribes of the Upper Dawar and fall in the administrative control of the Boya Tehsil of Miranshah. He might have confused the name of Mada khel with Muhammad khel which is a sub-tribe of Wazir. Besides, Riwaj has a broader spectrum through which socio-economic issues can be resolved and can't be confined to the dispute arisen on the elopement of a girl only and its settlement in accordance with the tribal usages and traditions. Waziri Riwaj encompasses almost all aspects of tribal life in Waziristan and provides solutions to all issues that come up its way in a speedy and economical manner. The known *Vakil* of *Riwaj,* Abdullah Zar Dosali states that the *Uthmanzai Riwaj* was compiled by the four leading Riwajyans, namely, Raji of Zoni khel, Kaji of Kabul khel, Zubair of Mamit khel and Sikandar of Tori khel in 1632 which contained fifty two different points of *Riwaj.* This work of compiled Riwaj is said to be available with certain elders of the Wazir tribe but I couldn't find it despite my candid efforts.

In the last decade of the 15th century, the *Yousafzai* tribe, that used to live in the suburb of Kabul, moved towards Peshawar valley under the chieftainship of Malik Ahmad Khan and occupied territories including the beautiful valley of Swat. The *Yousafzai* started quarrelling on the occupied land and split up into sections and sub-sections and couldn't establish their organized formal government there. However, they succeeded in the foundation of a social organization under the supervision of Sheikh Mali

Baba called *Wesh system* (*Garzinda land*). Sheikh Mali was a prominent Pashtun writer and minister of Malik Ahmad Khan during the reign of Babar in Swat. He wrote the famous book, Daftar-e- Sheikh Mali – a book on land settlement and revenue in Swat. The *Wesh system* of Sheikh Mali ran successfully for almost four centuries until it was changed by the ruler of Swat state. Under the *Wesh system* land was distributed among different sections of the Yousafzai tribe. As the land differed due to composition, locality, fertility, accessibility and availability of water, Sheikh Mali kept the allotment of land on land tenure system so that all segments of the society might share benefit and loss of the land equally. The land tenure system involved periodic re-allotment of ten years, seven years and five years keeping in view the nature of land. Each section of the tribe would move to the newly re-allotted land and houses and would distribute the land and houses according to household shares within the section of the tribe. The *Wesh system* also included *Sarai* land which would be allotted to the holy families, men and mosques etc. The *Sarai* land was also allotted to *Maliks* and *Khans* of different sections of the tribe. The *Sarai* land was exempted from *Wesh* System; therefore, those who would hold *Sarai* land would maintain high social status.

In 1915, the foundation of Swat state was laid down and Abdul Jabbar Shah was chosen as the first King by the elders of the *Jirga*. However, he was removed in 1917 and Mian Abdul Wadud Shah was made as a new king. The incumbent king was against the *Wesh* system which he considered as impediment in the way of progress and development. He introduced a new system of permanent land settlement and allotted the land for houses, farming

and orchards on permanent basis to the people of Swat. In fact, he replaced the *Wesh* system with *Mustaqil* land system but he couldn't do away with the old system till 1990s.[59]

Apart from the addition of *Wesh* and *Nikat* systems in dispute resolution mechanism of Riwaj, the concept of holding *Loya Jirga* emerged when Ahmad Shah Durani was chosen unanimously as the first King of the Modern Afghanistan in a *Loya Jirga* held in 1747 by the elders of the Afghan tribes. Since then, *Loya jirga* is being held in Afghanistan on occasions when the Afghan tribes face any matter of greater national significance.[60]

The evolution of *Riwaj* took ugly turn when the Britishers promulgated frontier crimes regulation to control the unruly Pashtun tribes in the trans-Indus regions and the borderland. The colonial authorities realized that the Pashtun tribesmen could only be pacified if they would leave them to spend their lives in accordance with their own *Riwaj*. They comprehended the pivotal role of *jirga* and *maraka* in dispute resolution and the sense of collectivism among the Pashtuns. *Jirga* was given vital role in dispute resolution. The concept of collective responsibility as envisaged in *Nikat* system was incorporated in FCR. To break the unity and discipline of the Pashtun tribes, the colonial authorities introduced a *Maliki* system; awarded the elders with titles of *maliks* and allowed allowances and incentives in lieu of services rendered. The frontier crimes regulation and *Maliki* system run up to this day in the tribal belt and haunt the lives of the tribesmen even in the 21th century.

At the end, I must say the evolution of *Riwaj* has almost halted; rather its decay has begun which has been discussed in Chapter 4 under the caption, "*Riwaj* is stumbling".

1.7. Riwaj and elements of Pashtunwali

Pashtunwali is the centuries' old unwritten moral codes that exist in the Pashtun society of Pakistan and Afghanistan as well as Pashtuns living around the world. It embodies certain moral codes that govern and guide the individual as well as communal behaviours of the Pashtuns. *Pashtunwali* is a dominant force of Pashtun culture and way of living and has maintained check and balance in the Pashtun society. It promotes love and affection and foments unity and discipline in the lives of Pashtuns.It prohibits immoral and indecent actions and deeds. It imbibes the sense of group feelings among the Pashtuns. It provides security of life, property and honour. It honours the women and protects the weak and impoverished. *Pashtunwali* does not neglect the rights of children and orphans and has set specific parameters in the forms of customary laws - *Riwaj* to protect their rights. Moreover, *Pashtunwali* honours guests and hospitality. It embodies rewards for good deeds and punishments for bad. Tipu Muhabat Khan refers to Mian Gul Abdul Wadud Badshah's explanation of *Pashtunwali* and says, "it is the name given to the valour, sense of honour, and lex non-scripta of the nation…hospitality, generosity, bravery, truthfulness, straightforwardness, keeping of promise, patronage of the weak, giving of shelter to all including enemies, moral courage in claiming one's rights, sacrificing one's life for one's personal as well as national honour, dying in the name of religion, and a number of

other desirable attitudes and worthy traditions". He further refers to the contention of James. W. Spain and states, "it is a law enforced by the *Maliks* and *Jirgas*, a custom, manners and mind-set as well as criminal, civil and social code."[61] However, I slightly disagree with the definition of *Pashtunwali* by James. W. Spain as he has confused *Pashtunwali* with Riwaj. *Pashtunwali* is not a law but a Magna Carta of the Pashtuns under which they lead their lives and derive laws and rules from for smooth running of the social order. The laws derived from *Pashtunwali* are called *Riwaj* which are un-codified and have taken the form of usages according to which disputes are settled through *Jirga* and *maraka*. About *Pashtunwali* Ali Wardak writes, "In addition to the basic requirements of Islam, Pashtuns observe the code of *Pashtunwali*. It is simple but demanding. Group survival is its primary imperative. It demands vengeance against injury or insult to one's kin, hospitality toward the helpless and unarmed strangers, chivalry and bravery in battle, openness and integrity in individual behaviour. Much honour is given to Pashtuns who can successfully arbitrate the feuds that are endemic among them. Fines and blood money are devices frequently used to limit violence among rival families. *Pashtunwali* is a code that limits anarchy among a fractious but vital people." [62] That is why Thomas H. Johnson and M. Chris Mason stated, "Pashtuns believe that their social code produces men, who are superior to those produced under the Western model, and they have

no desire to have a new social system imposed on them by outsider".[63]

Pashtunwali has a set of elements which have binding effect on the Pashtun society. Every Pashtun adheres to these elements as he knows violation of any element of *Pashtunwali* can cause social disorder in the society. These elements are briefly highlighted hereunder as to understand how *Pashtunwali* works in the Pashtun society and how these elements of *Pashtunwali* influence the behaviours of the Pashtuns as a whole. The detail explanation of *Pashtunwali* and *Riwaj* has been given in chapter two with explicit examples from the tribal history.

Nung/Namoos (Honour)

Nung/Namoos is the first and foremost element of *Pashtunwali* without which a tribesman doesn't remain Pashtun and loses place and respect in the society. *Nung* demands of every tribesman to defend his motherland and uphold the honour of his family, *khel* and tribe. *Namoos* means the protection of women's honour in the society. A tribal woman has to keep her chastity at all cost as she is an honour of her family. She has no option of love-making and choice of marriage, let alone any immodest act. No man can dare to have a lustful eye on a tribal woman, for he knows the consequences he can come across.

Melmastiya/Walmastya/Hospitality

Pashtuns in general and the tribesmen in particular are known for their *melmastiya*. It has two connotations - one, they extend *melmastiya* to guests in the form of food and respect as per the status of the guest or the affordability

of the host; two, they provide *Pana* to guests which is the most striking feature of *Pashtunwali.* A tribal Pashtun is bound to give sanctuary to his worst enemy at times, let alone his guest for whom he can kill and can be killed for.

Badal (Revenge)

Badal is another salient feature of *Pashtunwali*. It comes into force as a result of any injustice, wrong or injure committed by a tribesman within or out of the tribe. *Badal* is taken to restore one's honour at all costs even if it takes centuries. Revenge can be for a murder, injuries, abuse or even a *paighore/paighere*. Usually *Badal* is based on the concept of tit-for-tat wherein an ear for ear and nose for nose is cut down in vengeance. That's why bloodshed and enmity in Pashtun tribesmen continue unabated for years. However, this concept of revenge has undergone a change and in certain tribes the bread-earner is killed instead of awarding punishment to the wrong-doer.[64] *Badal* doesn't mean revenge only; it means reciprocation or retiring of favour/debt also which is called *Por/Peir* in *Riwaj*.

Nanawate/Nanawotye

Nanawate/Nanawotye has a broad spectrum and has several connotations. In Pashto language, it means 'to walk into or enter into'. *Nanawate* is the gathering of elders, pirs and fakirs by a tribesman to go into the house of his enemy seeking forgiveness (*Uzur)* for the wrong, harm or injury he has committed. He surrenders to his enemy and recognizes his strength and valour. *Nanawate* also means seeking *Panah* into the house of someone strong in the khel/tribe by a weak tribesman against his

enemy where he slaughters sheep to convince the asylum-giver to accept his submission for asylum. Sometime, a woman facing domestic violence takes asylum in the house of a tribal *malik* which is also called *Nanawate*. Another important, but ever missing aspect of *Nanawate* has been the gathering of the men and women folks to walk into the house of a tribesman to seek the hand of his sister/daughter in marriage (engagement).[65]

Hujra and Jumat

The recognition of an individual or family in a Pashtun society depends upon *Hujra* and *Jumat* he owns. *Hujra* is an Arabic word that means a side room. In other words, *Hujra* was a public guest room or house where the Arab people of the *khel* would sit together on all occasions of joys and sorrows. Some scholars think that the concept of *Hujra* exists among the Pashtuns since time immemorial. In ancient time, *Hujra* would be called as *OTAL* – means a sitting place of the elders and chivalrous of the *khel*. When the Pashtuns entered the fold of Islam en-bloc, they borrowed the word *Hujra* from Arabic language. It is not a place where guests can be entertained only, but a meeting point where tribesmen conduct *jirga* and *maraka* and make decisions pertaining to the *khel* or tribal interests. Besides, elders and youths sit late night in *Hujra* and listen to the folk-stories of princes and queens from the storytellers. *Hujra* is a great place of entertainment also. Every *Hujra* has a Violin (*rabab*) and a drum moulded pitcher which is being used as musical instruments.

Thus, *Hujra* is a community centre, a place of amusement, a parliament as well as a centre of excellence. If a man doesn't understand the manners of sitting in *Hujra* he is said to have void of Pashto (*Pashtunwali).*[66]

Similarly, every clan has a *Jumat* - a place where the tribesmen get-together to perform religious rituals. A *Jumat* is not a place where they pray only but a public holding where *jirga* and *maraka* are held and emergency announcements are made there from.

Hamsaya

Hamsaya has two connotations in *Pashtunwali*. One, *Hamsaya* may be a person or family who is lodged by another tribesman within the khel. This type of *Hamsaya* has low status in the tribal society and always serves the *Naik*. In return, he gets protection from all odds of life as he becomes a liability of the *Naik.* Two, sometimes an individual or a family takes asylum with a strong tribesman for protection against his enemies and comes under his *Hamsayatub*. Here also he becomes a liability of the protector. Any attack on his *Hamsaya* is considered as an attack on the protector. There are many instances in tribal history where the protector has taken the revenge of his *Hamsaya* which has resulted into un-ending enmity for the protector.[67]

Panah

Panah means asylum taken by a murderer, culprit or absconder in the house of a tribesman who is wanted to the government or the people of khel/tribe. Here also he

is safe and in protection of the tribesman. *Pashtunwali* allows one's enemy to take *Panah* in the house of his enemy. Besides, the government cannot make a house search of the tribesman in *Riwaj*. This customary law had been acceded to the Britishers as well, which is contrary to state laws wherein a person who gives asylum to a criminal is presumed as an accomplice to the crime. A murderer or a criminal can also take *Panah* in the house of a tribesman where he gets protection until he leaves his house and reaches his home safe and sound.[68]

Cheegha (Call)

Tribal life is not individualistic but communal in nature. One cannot live in isolation and unaffected by the activities that happen around him. In case of any mishap happens to a tribesman or the *khel,* a call is made through loudspeakers in the mosque or beating of *Cheegha dhole* by the *Dhamman* announcing the occurrence of the incident and asking the tribesmen to rise to the occasion. All tribesmen come out armed and well-equipped and rush to the venue of the incident without inquiring as to what has happened and to whom has happened. Soon the tribesmen raise a huge *Lashkar* called a *Cheegha* party to deal with the mishap. It is a call made in emergency when a house of the tribesman has caught fire or a tribesman has been attacked or murdered by an unknown enemy or enemy outside the khel. Nothing can sustain the force of the *Cheegha* as it flows away anything that comes its way.[69] Here it needs to mention that if the men of *Cheegha* kill the perpetrator against which *Cheegha* was announced, his revenge gets

into oblivion as no one among the *Cheegha* men accept its responsibility. In Pashto we call it as, ***Da spee pa marg marh sho*** (he died of a dog's death).

Cheegha as an element of *Pashtunwali* reflects the spirit of unity, love and affection among the tribesmen, but it has a hidden aspect of hatred also which sometimes leads to loss of human life. The *tarbore* looks for this aspect of *Cheegha* where he strives to settle score with his *tarbore* without incurring loss unto himself. It happens very rarely indeed, but when the men of *Cheegha* rush to the place of incidence and open fire on the enemy, the *tarbore* seeks an opportunity to fire a shot clandestinely on his tarbore pretending that he is killed by the enemy in the cross-fire. Therefore, it used to be a standing instructions from our elders to be at the tail of the *Cheegha* so that *tarbore* cannot avail such an opportunity.

Jirga/Jarga/Maraka

Jirga is a conflict resolution mechanism which has an important place in *Pashtunwali* and *Riwaj*. It is a gathering of the elders of the family, khel or tribes to find out a viable solution to a dispute. Thus, it is a legal framework that exists in *Pashtunwali* in the absence of the formal justice system in FATA; however, it works in urban areas of Pakistan and Afghanistan also where formal judicial system operates. *Jirga* makes all decisions in accordance with the socio-cultural values which are embodied in *Pashtunwali* and FCR. *Maraka* is another tool of dispute resolution in *Pashtunwali* that works simultaneously with the council of elders in tribal areas, though it has lost its place in the urban Pashtun culture. *Jirga* and *maraka* has been dealt with at length in the subsequent sections of this chapter.

Nogha/Nagha

Nagha/Nogha is a Pashto word means fine imposed by the *Jirga/Maraka* or by the political agent on account of an offence committed by a family, khel or tribe. The fine, if imposed by the political agent, is credited to the irregular account of political agents which, they say, is un-auditable. In fact, the political agents spend the money accrued out of fine on his sweet will and is not accounted for. *Nogha* may also be imposed on a tribesman on the directives of the *jirga* and *maraka* if he has committed any abominable act which is punishable in *Riwaj* or has been disallowed by the elders in the light of decisions made in the *maraka* or *local jirga.*

Rogha/Regha

Rogha means the conciliation made by the council of elders between two disputants or quarrelling parties. In

other words, it is the amicable solution of a conflict between two parties. *Rogha* is the outcome of the *Nanawate* in which one party seeks forgiveness. However, it may be a two-way process wherein both the parties desire to settle a conflict peacefully in order to avoid bloodshed. It must be clarified that the conciliation process may be initiated either by mediators or by the parties concerned themselves.

Tribal Lashkar / Sarishta

Tribal Lashkar is the war party raised by the tribesmen to deal with any mishap they confront with or implement the decision of the *maraka* or *jirga* in case the perpetrator disagrees to the peaceful solution of the conflict. It is indeed the force of volunteers or is created temporarily on the basis of *Nikat* to handle the situation. It is called *Sarishta* in Khyber, Mohmand and Bajaur Agencies. Abdul Qayum Afridi defines Sarishta as, "the type of unity of the whole tribe or sub-tribe against anti-social activities through collective action of the armed men of the tribe". In Waziristan, it is named as *Lashkar* if raised at tribes' level and *Tslweshti* – means war party of forty men if it is created on the basis of *Nikat* at khel level. In case of tribal *Lashkar*, *Nikat* does not go to the basic unit-means family of the social strata but the tribe as a whole contributes to the war party. In Orakzai Agency, it is called *Shalweshti* (war party of twenty men) while in Kurram Agency this force is known as *Ropakian*.[70]

Badraga

Badraga is the tribal escort provided by the political agent to his officials, the officers of the line departments or any

honourable guest for safe passage and travelling within the geographical limits of the tribal areas. The escort may be either chosen from the *Khasadar* force or may be specifically appointed for the purpose by the political agent. Besides, the tribesmen also escort their guests to provide protection within their tribe limits. It is evident from the Hindu-Muslim riots in 1947 at the eve of partition when the Hindus killed the Muslims in Indian Punjab while the Muslims retaliated by killing the Hindus and Sikhs. However, the people of Khyber Pakhtunkhwa and the tribesmen gave the Hindus and Sikhs *Badraga* at the cost of their own lives and provided them protection for safe journey to Hindustan.

Mlatarh (Folk support)

When an individual, family or khel of the tribe is in trouble, the folk of the *khel* come forward to support the aggrieved and needy. *Mlatarh* means to tie one's back which literally means to help a tribesman in need and adversity. It does not necessarily mean a support in fighting only. In the northern Pakhtunkhwa *Mlatarh* is called as *Ashar* where they come to help the folkman/family in harvesting, cutting trees and cleaning/digging of water courses/canals etc. while in Waziristan it is named as *teenga.* In a tribal war, sister tribes/khels support each other in terms of arms and ammunitions, fighting force, logistics, foods and protection to women and children. I think the division of Dawar and Wazir tribes of North Waziristan into *Spin Gund* and *Toor Gund* occurred as a result of *Mlatarh* of the tribes and *khels* that exists even to these days as usual.

1.8. Riwaj and Frontier Crimes Regulation

The fundamental judicial framework that officially exists in FATA is enshrined in the Frontier Crimes Regulations of 1901 which was promulgated by the British Indian Empire to exercise control over the Pashtuns in general and the restive tribesmen in particular. In fact, FCR is a blend of customary laws and legal framework of the colonial era based on executive discretions - a judicial system which has no replica in any parts of the world in the 21th century.

It is worthy to mention that customary laws provide a foundation upon which the edifice of statutory laws is erected; that is why the British empire also recognized the importance of *Riwaj* and the pivotal role of *Jirga* in the maintenance of peace and order in the Pashtuns belt and enforced Frontier Crimes Regulations wherein greater reliance was put on the council of elders. Besides, the creation of the *Malik system* in the tribal areas and the insertion of the clause of Collective Responsibility in FCR brought about considerable changes in the applications and procedures of the tribal *Riwaj* and gave it a new shape and form[71] which has been discussed at length in chapter 4.

The purpose of the discussion in this section is to highlight only the co-relation that exists between *Riwaj* and FCR since the Britishers took over as a new master of the Indian sub-continent. Since then, *Riwaj* and FCR go hands in hands with. I, being tribal, would say that the creation of Pakistan weakened *Riwaj* and strengthened FCR, for it was here that the tribesmen sacrificed their

freedom and opted to join the new homeland with the expectation that they would be able to live in accordance with their own customs and habits - *Riwaj* that has no alternative for the tribesmen.The expectations of the tribesmen proved wrong as the successive governments continued to run the tribal areas in accordance with the centuries old draconian laws of the colonial rule – the Frontier Crimes Regulations.

1.9. Riwaj and Islamic Sharia

Riwaj and Islam are presumed to be the two faces of the same picture as Pashtuns in general and tribals in particular are tightly knotted with Islam. They are die-hard when it comes to faith and religion. The Pashtuns think that *Pashtunwali* broadly and Riwaj in specific overlap with Islam. For instance, *Parda* is strictly observed in Pashtun society which is the striking feature of Islam also but in the same time *Parda* system in Islam and Riwaj is at random and has been construed differently by different sections of the Muslim *Umma* and the Pashtun society. For some people *Parda* means covering the entire body by a woman, for others it is only covering of the body parts of a woman which are more appealing to the opposite sex and cause sexual inducement. We do not want to entangle into the right and wrong of any ritual of Islam and *Pashtunwali* as it is not the topic of discussion of this work. The point of discussion in this section is to dilate upon the role of *Riwaj* and *Islamic Sharia* they have played in the maintenance of peace and promotion of harmony in the Pashtun society as mechanisms of dispute resolution. The Riwaj mechanism - *jirga* and *maraka* has been discussed in detail in the succeeding section of this chapter. Here only a cursory view of the

bond between Riwaj and *Islamic Sharia* for dispute resolution has been taken for necessary guidance of the readers.

As I have said earlier, the tribal are prone to settle their disputes in accordance with their Riwaj and *Islamic Sharia*. It needs to be disclosed here that tribesmen intend to resolve disputes wishfully. They would follow *Islamic Sharia* if they know they would benefit from and Riwaj if they think it would serve their interests. For example, they would like to have the division of inherited property through Riwaj, for it is here that women are excluded to get share in the moveable and immoveable property of their parents, but would like to opt for *Islamic Sharia* when it comes to the division of property earned by the individuals themselves. The process of conflict resolution through Riwaj, in the first instance, is called *Sulah*. The parties at feud bring the dispute to a jirga, or a mediator appoints jirgamar to examine the case and give verdict on it. If the *jirga* is constituted by the political agent, the *jirgamar* examine the case and put up their findings to the political agent who is supposed to issue his verdict on the case.

The *Sulah* process is quite simple and short. The *jirgamars* first lay down *teega* if the dispute is violent in nature and then take *Baramta* from the disputants. The *jirgamar* strive hard to obtain the *Wak* of the disputants and settle the dispute in a way which is based on accommodation of both the aggrieved parties. Here the difference between *jirga* and formal courts comes true. *Jirga* invariably causes win-win situation for the disputants while formal courts make them winner and loser. However, if they fail to obtain *Wak* from the

disputants to resolve the dispute through *Sulah*, then they recourse to Riwaj or *Islamic Sharia* as agreed upon by the disputants. In Riwaj, the *jirgamar* adopt the conventional way of dispute resolution wherein both the parties submit their claims along with evidences, if any, which they examine. They also cross-examine the disputants as well as witnesses, if any and issue verdict thereafter. According to Riwaj, the plaintiff and the defendant produce witnesses or take oath on the Holy Quran *(Kasam/Lo/Le)* as the case may be. If the witnesses produced by the plaintiff fail to convince the elders of the council or evidences/witnesses are not produced at all, the defendant takes oath on the Holy Quran to win the case. Taking oath on the Holy Quran depends upon the nature of the case. The oath-takers swear even if their number runs into hundreds. The plaintiff or defendant, as the case may be, is the first and foremost to take oath followed by his sons and brothers and so on. In some tribal areas, *kasamkhor* are hired to swear on the Holy Quran in place of the plaintiff or defendant.

In case, the disputants opt *Islamic Sharia* for resolution of the dispute, the elders of council appoint Islamic scholars of repute as judges who are called as *Qazi* or *Muhakam*. The disputants submit their claims to the *Muhakam* who examine them in the light of Islamic laws and issue a verdict. The plaintiff and the defendant produce witnesses or solid written evidence in support of their claims or take oath on the Holy Quran, as the case may be, to own the disputed property. The disputants have the authority to object over the prejudice or bias of the *Muhakam* before they sit to receive claims from the parties. Once they hold a formal session with the disputants and elders of the

council, the process of adjudication continues until verdict of the *Muhakam* is issued that becomes irrevocable and binding on the disputants. The verdict of the *Qazi/Muhakam* can only be objected by another set of *Muhakam/Qazi* with plausible reasons to be recorded. The aggrieved party has the right to object over the verdict of *Muhakam* thrice only, after which it cannot be broken. However, it happens very rare as no *Qazi/Muhakam* gets ready to break the verdict made by his colleagues. They also know that it would cause stubborn and egoistic tendency in the disputants, which may lead to bloodshed and un-ending enmity.[72]

1.10. Jirga and Maraka

The audacity and valour of the tribesmen and their love for freedom and independence have been acknowledged by all foes and friends alike. All foreign invaders came and failed to subjugate them while seeking fortunes in their land, and sought their consent to pass through their valleys and passes without any harm. Never any invaders succeeded to promulgate and implement their laws over the tribal people, for they have their own unwritten and un-codified customary laws- *Riwaj* which, they think, has no parallel in the world. In fact, *Riwaj* is the best combination of customary laws and is unrivalled as far as keeping of social order and peace among the tribes is concerned. Nevertheless, it is *Riwaj* (here *Riwaj* means social customs and usages) itself, which causes sometimes social disorder and conflicts among the tribesmen, which are settled through the best judicial system provided by *Riwaj* (here *Riwaj* means the dispute

resolution mechanism) to the tribesmen in the form of *Jirga and Maraka*.

Though it is difficult to make a comprehensive definition of *Jirga*; however, the definitions of a few social scientists may be delineated here. Ali Wardak, a known Afghan Criminologist says that *jirga* is an original Pashto word that, in its common usage, refers to the gathering of a few, or a large number of people. The word *jirga* is also used in Persian and Dari languages. He states that *jirga* is the derivation of the word *jirg* which means a 'wrestling ring', or 'circle'. These meanings of *jirg* and *jirga* strongly reflect the rituals and processes of the Pashtun traditional tribal *jirga* where people gather and sit in a large circle in order to resolve disputes and make collective decisions about important social issues. Some scholars believe that the term *jirga* originates from the Turkish language where it has a very similar meaning to those in Pashto, Persian and Dari. Rafi a contemporary Afghan scholar of Ali Wardak defines *jirga* as, "historical and traditional institution and gathering of the Afghans that, for centuries, has resolved the tribal as well as national political, social, economic, cultural and even religious conflicts by making authoritative decisions."[73] Noor al Ameen Yousafzai describes *jirga* as the combination of two words – *Jar* and *Gah*. *Jar* means speaking loudly and *Gah* means a place. Thus, it means a place where people speak louder on the issue under discussion.[74] Abdul Qayum Afridi considers it a court whose judges are nominated in equal number by the disputing parties from

amongst the elders of repute.[75] The amended Frontier Crimes Regulations of 1901 defines *Jirga* as, "a council of three or more respectable elders of FATA appointed by the political agent or the deputy commissioner, as the case may be, and presided over by the assistant political agent vested with the powers under Section 30 of the Code of Criminal Procedures, 1898 (Act of 1898)".[76] In other words, *Jirga* is the historical and traditional institution and gathering of the tribal elders that has served in every era to resolve the political, social, economic, cultural and even religious conflicts by making decisions based on mutuality, consensus and respect of the tribesmen.[77]

In fact, *Jirga* is the gathering of the tribal elders putting their heads together on a matter of *khel*, tribe or national character so as to sort out a viable solution to a conflict and maintain a peaceful social order in the society in accordance with the dictates of *Pashtunwali* that mould the Pashtun's behaviours and ways of life. In addition, it is a post dispute occurring mechanism for conflict resolution comprising *spinziri* and *Ulema* gathered at the request of the parties at feud or constituted by the political officer in the light of the provisions available in Frontier Crimes Regulations.[78]*Jirga* has been used as a court in criminal and civil cases by the tribal community, though it is a council of elders and make decisions by consensus. However, the elders of the council become courtiers of the political agent when it is constituted officially. The concept of *jirga* as a court has ceased to

exist in the settle areas of Pakistan and its place has been taken by formal courts. About the role of *jirga*, J W Spain writes, "apart from enforcing its own penalty for contempt, there is a little of the judicial or police functions in the *Jirga*'s role in the community. It doesn't ordinarily determine guilt or inflicts punishment but seeks to achieve settlement. Both the plaintiff and the defendant appear before it as equal. If it cannot get them to agree to a settlement, for example, the acceptance of a blood money in lieu of revenge for a death, it merely defines the rights of the parties concerned in accordance with the established Pathan traditions".[79]

The institution of *jirga* has certain salient pre-requisites which need to be understood by those who are interested in the tribal Pashtun culture. First, *jirga* is held to resolve a dispute occurred between two parties; therefore, disputants are required to bring the dispute before the *jirga*. However, sometime a mediator intervenes without the consent of the parties and urges the disputants to sit and hold a *jirga* to resolve the dispute amicably. Second, *Baramta* is obtained - a guarantee or surety bond which is taken in the form of a cash or kind to maintain peace between the parties at feud for a specific period. Usually guns or vehicles are taken in custody by the elders. If a disputant fails to implement the decision of the *Jirga* or flout the peace process within the given period, the *Baramta* is forfeited by the elders and a written verdict is issued in favour of the aggrieved party. Olaf Caroe says,"*Baramta* is a Central Asian Turkish origin word which means seizure of persons, animals and property belonging to a tribe/individual at fault in order to bring

pressure on for restitution" (Caroe:350). Anyhow, the *jirgamar* sit in a circle and listen to both the disputants. They discuss the issue at length and examine each and every aspect of the dispute. Third, the elders, in the first instance, strive to settle the dispute by adopting the method of accommodation, give and take and try to solicit their *Wak* to allow the elders to decide the dispute at their free will. Soliciting *Wak* is not an easy job for the elders. It is a total submission of the disputants and an open check placed at the hands of the elders. They can decide against or in favour of any party to which the disputants are bound to yield in. Though the elders of the council get absolute freedom of decision, yet they make a judgment that fulfils the criteria of a good and sensible adjudication so that nobody can point finger at them. This process of dispute resolution is called *Sulah*. If the elders fail to obtain *Wak* from the disputants, then the dispute is settled through Riwaj which involve production of witnesses and customary oath. In Riwaj, the decision of the council of elders has binding effect on the disputants. However, they can object or reject the decision if they think it is made unfair, prejudiced/biased and is not in consonance with the prevailing *Narkh/Riwaj*. In case of objection, the disputant shows his timely annoyance and appeals for holding another jirga. Finally, it is essential to pay some money as compensation or fee to the elders of council which keep them involved in the dispute till its resolution. The elders cannot withdraw from the dispute resolution even if they want to. The compensation paid to the elders is called *Pandonrha* in Waziri *Riwaj.*[80]

There are no hard and fast rules to decipher the criteria/qualifications for selection of the elders of the council. Generally, *maliks* and *mashran* who have wisdom and elegance conduct *jirga* but it doesn't mean ordinary people are prohibited to participate in *jirga*. *Jirga* is the most democratic form of tribal institution based on the concept that all tribal are equal irrespective of their caste, creed and social status. *Jirga* has several tiers and every tribesman can play the role of a *jirgamar* in any tier in accordance with his wisdom and consciousness. The selection of a *jirgamar* does not depend upon his social or financial status indeed, but upon his wit and wisdom. However, the tribal chief usually excels others because he is groomed by his elders and has ample opportunities to learn. Nevertheless, bravery in war, hospitality, *Nung* and *ghirat* are the common characteristics of the elders of the council. Ali Wardak writes, "According to tribal equality, every free and experienced free male person of the tribe has the right to attend, speak and decide.' Indeed, there is no hierarchy of speakers and no chairman in the jirga process."[81]

Jirga has wide dimensions to play a role in the provision of a viable and peaceful environment to the tribesmen. It can be held to resolve social, political, financial and religious disputes in accordance with *Riwaj.*The political agent, who is not less than the Monarch of 17th century, relies on the council of elders in order to maintain law and order in the tribal areas; though he thinks himself superior but he doesn't know the ABC of *Riwaj* and runs the show by spending money among the *maliks* and elders.

Jirga has the following manifestations and tiers which operate in the tribal areas. Its importance may be elicited from the dimension and social context in which it operates.

Local jirga is held at a family or khel level to resolve disputes of marriages, domestic violence, inheritance, land and business matters etc. Family is the basic unit of social structure in the tribal society; therefore, local *jirga* is held within the family or *khel* by the elders to resolve any issue which comes up or affects the honour of the family. In local *jirga* women also participate and play their roles as required. Similarly the *khel*, which comes into existence as a result of the kinship among different extended families, holds local *jirga* to settle conflicts in the light of *Riwaj* prevailed in the tribal areas.

Tribal Jirga is either held by the tribesmen themselves in the non-protected areas of FATA or is constituted by the political officer to find out amicable solution to a dispute which is gigantic in nature and involves more khels/tribes. The concept of *tribal Jirga* conspicuously reflects in the story of the TDPs (Temporary Displaced People) of FATA where the tribesmen would hold *tribal Jirga* among themselves as well as with the government officials to sort out viable ways and means for their timely relief, safe and peaceful return to their homes. However, a new manifestation of official *tribal Jirga* was witnessed during the army operation, Zarb-e-Azab when *jirga* would be conducted by the officers of Pakistan army instead of political agents. It was also noticed that the tribesmen preferred to hold *jirga* on the gesture of army instead of the political agent or his political officials that has been discussed in chapter 4 at length.

National Jirga is the third tier which has no manifestation in tribal areas; however, it is held by the Pashtun political leaders among themselves or with any other political dispensation on the issue of national significance pertaining to the Pashtun areas. Further, the concept of *national jirga* has assumed a new dimension as it is held for issues relating to other parts of Pakistan. The role of *jirga* in the row between Pakistan Tahrike Insaf and Pakistan Muslim League (N) on rigging in election 2013 is the glaring example which signifies that national *jirga* has been conceptualized by the national leaders and have realized its significance in dispute resolution.[82]

Loya Jirga is the fourth manifestation of *Jirga* that exists in Afghanistan only. The *Loya jirga*, or Grand Jirga of Afghanistan is the grand assembly held periodically and represents all tribes of Afghanistan to discuss issues central to the socio-political order, sovereignty and unity of Afghanistan such as choosing of a king, declaration of war, ratification of peace treaties, adoption of a constitution, and deciding the involvement of Afghanistan in global conflicts and political/military blocs**.** The logic behind this system seems to be the social fabric of the Afghan society which is tribal in character and perceives *Loya Jirga* to be more representative forum of Afghan tribes than the parliament itself. For instance, the *Loya Jirga* of Afghan tribal leaders and elders was convened in Kandahar in 1747 to choose their King. They couldn't arrive at any single person to be chosen as their leader that could result in civil war among the tribes; therefore, Pir Sabir Shah–a spiritual man of high calibre, chose Ahmad Shah Abdali as King who laid down foundation of

the modern Afghanistan. The selection of Ahmad Shah was unanimously agreed in the *Loya Jirga* by the elders of the tribes.[83] Since then, *Loya Jirga* has been convened time and again and has played a vital role in the Afghan affairs. In 2003, *Loya Jirga* was held to consider the proposed constitution of Afghanistan drafted by the interim government of Hamid Karzai. The *Jirga* was attended by almost all tribes of Afghanistan. The *Jirga* approved the new constitution which Hamid Karzai signed in January, 2004. It was under the newly approved constitution that Hamid Karzai held presidential elections and became the first elected President of Afghanistan.[84] Recently, the bilateral security agreement between Afghanistan and America was executed only after the consent of the *Loya Jirga*. The legitimacy of the decision taken by the *Loya Jirga* depends upon the acceptance of the structural formation, the charismatic authority of the participants and their morals and conducts. In fact, the concept of *jirga* has taken such a place in the socio-political life of the Afghans that the two houses of Afghan parliament have been named as *Wolasai jirga* and *Mashranao jirga*. [85]

Apart from the afore-mentioned tiers of *Jirga,* the tribesmen hold *jirga* with the upper echelon of the government which, albeit, don't fulfil the theoretical and practical criteria of a true jirga, yet they fall under the ambit of *jirga* and are named as such. For instance, the elders of the tribes are invited to hold *jirga* with any new Governor Khyber Pakhtunkhwa or President of Pakistan

which is just a formal sitting of the elders with the new incumbents. The *jirga* is not constituted to resolve a dispute but is meant to convey a message of the government or muster a support on any matter of national importance. In such type of *jirga*, the elders are not supposed to sit in a circle as *jirga* requires and usually sit on the chairs facing the honourable guests which are contrary to the *jirga* held by Sultan Behlol Lodhi and Sher Shah Suri with the Pashtun tribal chiefs. Similarly, new additions were made into the forms and manifestations of *jirga* when the Government of Pakistan held *jirga* with the Taliban through peace committees and made *Shakai* and other agreements. The *jirgamar* of these *jirga* were incompetent enough to settle the dispute between the Government of Pakistan and the Taliban. They had no *Wak* at their disposal to adjudicate and no *Baramta* to be confiscated if any disputant party failed to abide by the *jirga* verdict. Moreover, they had no force to implement the decision if any party refused to comply with.[86]

Jirga in Waziristan in 1920

Jirga of Safi sub-tribe of Mohmand Agency

Maraka is another socially acceptable institution for conflict resolution that exists in the tribal areas as well as Pashtun areas of Afghanistan. It is used interchangeably with the *jirga* in such a manner that it cannot be differentiated by the Pashtuns even the tribal themselves,

let alone the non-Pashtuns. A known Afghan Scholar, Ali Wardak says, "The existing body of literature shows that *maraka* has not been defined formally. However, looking at different aspects and elements of *maraka*, it may be described as a local institution of dispute settlement that incorporates a prevalent (time and space-bound) *narkh*, institutionalized rituals, and a body of *Marakyans* whose *prikra* about a dispute is binding on the parties involved. This description indicates that narkh, institutionalized rituals, *Marakyans* and *prikra* constitute the fundamental elements of *maraka"*.[87]In fact, *maraka* is a sitting of the elders and *khel's* people in circle or otherwise to deal with any issue of significance which comes their way or is being perceived detrimental to their interests or against the tribal Riwaj. The people of the *khel* get together in a mosque, playground or any open place and discuss the potential issues which they cope or may crop up in the days to come. Usually, *maraka* is held if the *khel* confronts issues of water management for irrigation purposes, violent conflict arisen with the neighbouring khel/tribes, matters of dowry and marriages and any matters related to the government etc. *Maraka* is more democratic in nature and is supposed to be attended by the entire khel. It makes decision by consensus which is called *Quomzeena* in Khyber Agency and *Teenga* in Waziristan. In some tribal agencies it is named as *Tarhun* (Bound to act). The elders of the *khel* sit in the inner circle or in the front of the maraka and the ordinary people in the outer circle or any irregular sitting arrangement facing the elders. They are called *Marakyans* or *Marakyons*. A *maraka* can also be held by more than one *khels* and

tribes when the issue affects their common interests being pernicious and needs to be nipped in the bud jointly. It is purely a folks gathering and is not interfered with by the political administration, provided the act or decision of the *maraka* doesn't come in conflict with the interests of the administration. However, it has been noticed that most of the *maraka* is planted and held on the gesture of the political administration to serve their interests. I recall a classic example of *maraka* which was held in our village Hassu-khel - a place which has been endowed by nature with a lot of potentiality. It is situated just on the bank of the River Tochi just one and half kilometre off the Mir Ali Bazaar. It's a village of fertile and green lands where one can grow anything among fruits and vegetables - means all flora and fauna exist. Being located on the river bank, running water is in abundance and land is cultivable. People are highly educated and politically well-aware. They lead a standard life and don't look like clumsy and inelegant. Almost fifty percent of the civil servants in North Waziristan belong to village Hassu-khel. Though educated and financially better off, they are proud to be tribal and adhere to all social norms as are given in Riwaj. The gruesome story of holding a *maraka* began with the murder of Alamzeb, a young handsome guy of seventeen years by two Al-Qaeda terrorists who lived in his Hujra as guests. After killing Alamzeb, the Al Qaeda killers fled away. The two young and brave nephews of Alamzeb, who were not more than fourteen and fifteen years at that time, chased them to take the revenge of their uncle. One of the killers was shot dead passing through the Tochi riverbed while the other escaped.The two dashing youngsters brought his carcass in a hand-driven cart and threw down in the *Eid-Gah*. A

maraka of the khel was held to deliberate on the issue of the dead body of the terrorist when the escaped terrorist turned up again like a wind to drift away the body of his dead comrade. He started firing in the air to push away the people of the *maraka* to lift the dead body on his shoulder, but the all-alert armed men of the village retaliated immediately and killed the survived terrorist on the occasion. It was decided that the corpses would be handed over to the political tehsildar to show unity and tribal cooperation with the government.

Maraka involves the following steps in dispute settlement faced by the tribe/khels. Firstly, a truce is made by the jirga between the belligerent tribes/khels to create a peaceful environment for negotiation which is called *Teega/Konrha* (stone) in Waziristan. In fact, *Teega* is a timely closure of hostility between the parties at feud. Secondly, a tribal force is raised to implement the decision of the *maraka*. Thirdly, the elders of *maraka* attempt to resolve the issue through negotiation to arrive at a peaceful solution. Finally, the perpetrator is punished according to the nature and severity of the offence. He may be fined; his house may be demolished and set ablaze; and he may be banished from the khel/tribe.

Maraka in Tribal Areas

1.11. Difference between Jirga and Maraka

The confusion between *jirga* and *maraka* occurs indeed due to the commonalities they have in their scheme of things–means sitting in a circle, decision taking procedures, implementation and upholding of Riwaj etc. but there are certain vivid differences between *jirga* and *maraka* that need to be highlighted here to make it home to those who are not the practitioners among Pashtuns or those who take interest in the Pashtun culture of the tribal areas.

First, *Jirga* is the post conflict occurring resolution mechanism which is held to resolve the conflict arisen among the tribesmen while *maraka* is the pre-emptive act of the khel/tribe to nip any emerging issue/conflict in the bud; it tackles with existing issues also. Second, *Jirga* has different forms and manifestations. It may be big or small and local or national but *maraka* is always big as it is attended by all and sundry. Third, *jirga* is held either at the request of the disputants or the *Salisan* or if the

matter is referred by the political agent for settlement while *maraka* is announced if the people of the khel/tribe confront any issue that defile their honour or affect their interests. Fourth, *Marakyans* always come to attend *maraka* while dancing to the tune of the drum-beat being heard on that occasion while *dhole* is not necessarily required to be beaten in the *jirga*. Fifth, *jirgamar* are usually elderly and grey-beards and don't need to be armed during *jirga* as they are accompanied by their escort for security while *Marakyans* come out armed and well equipped and look as they are going to attack the enemy in the battlefield. Sixth, *jirga* resolves disputes of greater importance and the elders usually belong to various khels/tribes. Nevertheless, *jirga* may also be held at familial level to resolve issue of lesser significance which is called local jirga. *Maraka* settles issues of lesser importance and its members usually come from the same *khel*. Sometimes, various *khels* of geographical contiguity hold joint *maraka* if their common interests are at jeopardy. Last, *jirgamar* sit in circle to settle a dispute between two parties while *Marakyans* gather to tackle with any existing or emerging issue. *Jirga* is decisive while *maraka* is consultative in nature.

Jirga and *maraka* are the two most effective tools of dispute resolution that exist in *Riwaj* as well as *FCR*. They have played a vital role in preservation of cultural norms and values of the Pashtun society in general and tribal community in particular. In fact, peace prevailed in FATA due to existence of this democratic dispensation that provides representation to all and sundry irrespective of their social and financial status, creed and caste. Therefore, the terrorists, while realizing the importance of *jirga* and *maraka*, set upon killing the tribal elders in order

to weaken these two institutions of the legal system and extinguish the vanguard that could lead and foster unity among the tribesmen. No doubt, the terrorists prevailed over the tribesmen when their *jirga* system vanished and their vanguard lost.[88]

The critics of *jirga system* have certain contentions which need to be highlighted here. They contend that though *Jirga* is the cornerstone of legal system in Pashtunwali, yet it has experienced certain changes in its structure and application due to which it has lost its original manifestation and status of being the solitary legal system of the tribesmen. They add that earlier the elders would be considered as men of principles, honesty and integrity; now they have adopted *Jirga* as a source of income. Moreover, the advent of *Lungi-holders* immensely affected the credibility of *jirga*. They have bought *lungis* from the government authorities; therefore, they don't have any regard for the honour and dignity of their tribes and earn money by hook or by crook. They have no regards for *Riwaj;* rather they don't understand the essence of *Riwaj*. They are chosen as members of the *official jirga* because they have turned spies rather than elders to represent their tribes. The perception of easy and quick justice through *Jirga* also becomes absurd because the elders of the councils attempt to prolong the dispute and make it a mint to make money from.[89]

The critics of *Jirga* also argue that the elders don't understand the human rights laws and standards and the fundamental rights as enshrined in the Constitution which

are, in fact, inconsistent to *Riwaj* and *Pashtunwali*. They also hold that women and other marginalized communities have no representation in the *jirga system* due to which its viability as the alternate legal system can be pointed finger at. In fact, it contains many fault lines to be accepted as alternate legal system in the globalized world.[90]

No doubt, critics have rightly conceived certain applications and procedures that have been obsolete or corrupt in the *Jirga system*, but it doesn't mean there is no room for improvement therein. The conduct of the elders and their weakness for money may be objected over, but it will be out of place to say that they have no command on *Riwaj* and system of *jirga*, for it is only the elders of the council who understand the technicalities of *jirga*. A raw hand in *jirga system* means losing of the case in a dispute. Ali Wardak, an Afghan Scholar says, "*Jirgamar* include prominent representatives of all of the tribe's various khels who have proven qualities of leadership. These qualities include a proven record and reputation of *milmapalana* (hospitality), possession of good family *nung aw ghirat*, a large number of men in the family, bravery in war, political influence within the government, verbal eloquence and regular sound judgments in *jirgas*."[91]

On the matter of human rights, the critics have plausible contention against *Riwaj* and the *Jirga system*, but one shouldn't forget the die-hard in-built connection between culture and social human life. A social norm or value may be inhumane in one culture but it may be an honour to

follow in another. For instance, fratricidal polyandry was rampant in Kota society of the Southern India, but it is a social taboo in the Pashtun society. *Kotas* belonged to *Nilgiri* Hills in South India where the man's brother would have free sexual access to his wife in his absence or when he would become incapacitated or any way unable to fulfil his husbandly duties.[92] Moreover, one can also disagree with objection of misrepresentation of women and marginalized communities in *jirga*. As mentioned earlier, *jirga* has several tiers based on the nature and severity of the dispute. Women and other marginalized groups do participate in local tier of *jirga*, where family or *khel* disputes are settled. Moreover, women have also been allowed to sit in the *Loya Jirga* in Afghanistan. If women are allowed to sit in all tiers of *jirga* it will go against the social norm and Islamic practice of *Parda* which can never be accepted as *Riwaj* by the Pashtun tribesmen.

Despite the concerns of the critics about the inclusivity, corruption, and human rights, *Jirga* is a vital part of *Pashtunwali* and *Riwaj* of the tribesmen. It plays a pivotal role in conflict resolution in today's tribal society and will do the same in the days to come.

1.12. Patterns of Riwaj

Riwaj has different patterns across the tribal areas that vary from tribe to tribe. In South Waziristan, *Riwaj* has taken shades from two different tribes. The richness and fertility of Riwaj of the Ahmadzai Wazir and *Riwaj* of Mizh Dray Maseed (we three Mahsud) referring to the three main clans of Mahsud, namely Alizai, Behlolzai and

Shaman khel, have proved very productive and robust for the entire tribe of South Waziristan. In North Waziristan, *Riwaj* is known as 'Waziri' or Utmanzai Riwaj, which is equally applicable and acceptable to both the Wazir and Dawar tribes. In some parts of the tribal areas, *Riwaj* may be found in written form such as Kurram Agency but, as a whole, it is unwritten and un-codified. In Khyber Agency, Afridi tribe is more vigorous and dynamic; therefore, the *Riwaj* prevalent in the Khyber Agency is known as Apriday *Riwaj/Layar* and has its own standing procedures and applications on the Afridi tribe. The Riwaj of Orakzai, Mohmand and Bajaur have their own forms and expressions. The experts of *Riwaj* or *Narkh* are called *Riwajyan* or *Narkhyan* who know the basic knowledge, applications and procedures of *Riwaj*. The fundamentals of Riwaj are the same and similar across the whole tribal belt as *Riwaj* has been deduced from the elements of *Pashtunwali* which provide foundation to *Riwaj* and are die-hard to be modified. *Riwaj* slightly varies from tribe to tribe in its applications and procedures due to the following elements.

Codification/non-codification of Riwaj

Riwaj is the best combination of un-codified customary laws which provides informal legal framework through which disputes cropped up of customary applications can be resolved. It has no codified sections and clauses to be referred to by the elders of council while making decision. It varies from tribe to tribe and locality to locality; therefore, it has no unitary form. The verdict issued by the *local jirga* cannot be challenged in any formal courts because *Riwaj* is inconsistent with the statutory laws. *Riwaj* has no formal implementation force to execute the

decision made by the *jirga* but has binding effect on the disputants to agree to. *Riwaj* doesn't provide for any legal appellate authority; however, the disputant parties have the right to raise objection on the elders on the basis of *Shuba* during proceedings of the *jirga.* The verdict of the *jirga* becomes irrevocable once it is announced. If the disputants fail to accept the verdict of the *jirga*, the *Baramta* obtained from the disputant is seized and the matter is referred to another jirga wherein the judgment of the previous *jirga* is produced and the *jirgamar* therein are summoned to explain the point objected by the disputant in the light of the local *Riwaj. Shuba* can be exercised twice only.

Nevertheless, *Riwaj* is available in written form in Kurram Agency wherein *jirgamar* can refer to specific clause or section to be quoted in the judgment. This codification and non-codification is one of the reasons for variation in *Riwaj* of different tribes.

Customary variations

As mentioned earlier, *Pashtunwali* provides broader code of conducts which has equal application on all Pashtuns but customary practices may be different from tribe to tribe across the tribal belt. For instance, the killing of a thief in Mahsud tribe has revenge to be taken by the victim's family but the killing of a thief has no revenge in other Pashtun tribes of FATA. Similarly, if a *Rogha* is made between two enemies through the process of *Nanawate* in a murder case in Mahsud tribe, the aggrieved family can kill his enemy even after conciliation which is otherwise umbrage in other tribes. The murderer returns the compensation, if taken during conciliation process, and announces his revenge. The avenger then

sends *Nanawate* for reconciliation which is generally accepted. This customary variation leads to the changing of patterns in *Riwaj* which has apparent impact on the decision of the *jirga* in the tribal areas.

Law of evidence

Riwaj has no formal law or procedure of evidence to be referred to or applied during the dispute resolution. In *Riwaj,* the onus of proof lies on the shoulder of the plaintiff; therefore, he produces written evidences / witnesses which are properly examined. If he fails to produce witnesses, the defendant comes forward to take oath on Quran. For instance, tribes where land revenue record exists, disputes are settled accordingly, if not, the dispute is resolved as per the prevailing *Riwaj* of the tribe. Nevertheless, the system of evidence is deficient in *Riwaj* due to the reason that it is based on the availability of witnesses and their credibility. In Kurram *Riwaj*, written evidence can be presented if the dispute is between Sunni and Shia or Hindu and Shia but a Sunni witness cannot appear against the Shia and vice versa. Moreover, the number of oath-takers may vary from case to case and tribe to tribe keeping in view the nature of the dispute. If the crime is perpetrated in a broad-daylight, at night, dense forest or mountains, the number of oath-takers in a dispute increases or decreases accordingly. Besides, tribes where *Riwaj* has strong application and tribal bond is firm, witness may appear before the *jirga* to speak the truth. For instance, a witness hailing from Wazir tribe has no fear in North and South Waziristan to testify any evidence against a disputant belonging to Dawar or Mahsud tribe respectively because of his strong sense of belonging to his tribe but it might be otherwise in

Bajaur Agency where people have little *Asabiyat* to their tribe. That is the reason that the *Riwaj* of *Le/Lo* has been rampant in tribal area in which the accused swears on the Holy Quran that he has neither committed the offence nor accompliced to nor informed of it. It is pertinent to mention that in statutory laws the burden of proof lies on the plaintiff in the civil dispute and the prosecution in the criminal case. However, the burden of proof may be changed from the plaintiff to the defendant both in *Riwaj* and statutory laws depending on the nature of the dispute.

Oath on the Holy Quran

Sometimes a dispute takes such an ugly turn in *Riwaj* that it cannot be settled through *Rogha* and *Sulah* and is resolved through *Riwaj* which involves customary oath on the Holy Quran called *Riwaji Le/Lo*. This *Riwaj Le/Lo* varies from tribe to tribe in term of number of the individuals who swear on the Holy Quran to prove that they are innocent. For instance, it may be hundreds in North and South Waziristan in a murder case of suspicion or land dispute depending upon the number of plaintiffs and defendants but it is restricted to eight individuals in Afridi tribe of Khyber Agency. This variation in Customary Le, among other things, has also led to a change in the *Riwaj* of different tribes in FATA.[93]

Effectiveness of the political administration

Riwaj also varies from *Agency* to *Agency* on the basis of efficiency and effectiveness of the political administration and submissive disposition of the local tribes. If a political agent is efficient and competent he knows how to

influence the local *Riwaj* in collaboration with the local *maliks* and elders of the tribes. For instance, the people of Bajaur are more submissive or enlightened, I would say, to pay homage to the dictates of the political agent than the cults of *Pashtunwali* or the local *Riwaj* but it is the other way round in North and South Waziristan. Here the competence of the political administration contributes to the pacification of the restive tribes only and has no impacts on the local Riwaj. Tipu Muhabat Khan states in his book, 'The Tribal Areas of Pakistan', "The Bajaur Agency stands out differently from other agencies of FATA in its political character as this agency was ruled and influenced by dominating Khans, which is not the case in the rest of FATA which has a fiercely independent and egalitarian character."

Religious and secular affinities

The tribesmen of the borderland have different religious and secular affinities which have sway over their mental proclivity and exert influence on the local *Riwaj*. Tribesmen who have more predilections towards religion strive to settle their disputes in accordance with *Islamic Sharia*; however, it has been noticed that even then their religion is influenced by the local *Riwaj*. It has also been revealed that secular people have more inclination to *Riwaj* mechanism of dispute resolution than ordinary tribesmen which have greater bearings on the applications and procedures of the local *Riwaj*. For instance, the people of Waziristan seem to have been hybrid in character – means secular as well as religious; therefore, they settle their disputes in accordance with *Islamic Sharia* as well as *Riwaj*. On the contrary, the people of Kurram Agency are secular in nature and

resolve their disputes in accordance with their written *Riwaj.* About Bajaur, Tipu observes that “Bajauris have a distinguishing feature of religious character. While it is *Riwaj* in most of FATA, the Bajauris generally prefer the settlement of disputes under Sharia or religious law”.[94]

To sum up, *Riwaj* keeps the body and soul of the tribesmen together and functions as arteries and veins run into a human skeleton. It provides a body structure upon which the social fabric of the society stands.

Olaf Caroe in his book, 'The Pathan', beautifully epitomizes the social structure of tribal areas and says," when comparing his loose tribal organization with all the apparatus of the modern state, he will come out with the aphorism, ***Tosi pokh diwol istai, mizh laka dangayi***, you are a cemented wall and we are like the loose stone boundary of a field, a comparison that ought to be much truer than it really is. For the modern state, whether Britain or Pakistan, does not always display a unity of conception or a continuity of neither policy, nor can more primitive societies always be dismissed as barbarians. The intelligent Mahsud malik would protest that the end of any social or political system must be to produce a fine type of man, and, judged by this standard, the Mahsud system is the best. Therefore let us keep our independence, and have none of your law and order and your other institutions, but stick to our customs and be men like our fathers before us".[95]

REFERENCE AND NOTES

1. Colonel H C Wylly, *From the Black Mountains to Waziristan*, (Sang-e-Meel Publication, Np), 2003, p.13-16
2. Arnold Keppel, *Gun Running and The Indian North West Frontier*,(Quetta: Gulshan-e-Adab, Quetta, 1977), p.5,6
3. Colonel H C Wylly, p.13-16
4. Olaf Caroe, *The Pathan,* (Karachi: Oxford University Press, 1958), p.22
5. Dr. S .Iftihar, *Some Major Pakhtoon Tribes along the Pak-Afghan Border*, (Peshawar: Area Study Centre University of Peshawar), 2005, p.28,29,34
6. Ibid, p.2
7. Abu Bakar Siddique, *The Pashtuns, the unresolved key to the future of Pakistan and Afghanistan,* (India: Random House India, 2014), p.34
8. Interview with Ahmad Khan Orakzai, a retired Deputy Secretary Law & Order FATA, Secretariat, Peshawar, 08 April, 2015.
9. Tipu Muhabat Khan, *The tribal Areas of Pakistan, A Contemporary profile*, (Sang-e-Meel Publication, Np 2008), p.93
10. Interview with Naushar Khan, a retired political officer from Mir Ali (NWA), Feb 15, 2015.
11. Dr.Taj Muhammad Wazir, *Waziristan ke Rasm-o-Riwaj ka Shari Qawanin ke sath Mawazna aur Pashtuno ki Tarikh*, (Islamabad: Misak Enterprises, 2014), p.468,469
12. Interview with Naushar Khan, Feb 15, 2015.

13. Interview with Ahmad Khan Orakzai, 08 April, 2015.
14. Mohammad Afzaul Shah Bakawee, The Pakhtoons, (Pap.Board printers, Pvt Ltd, Np. Nd), p.516-518
15. Colonel H C Wylly, 2003, p.281
16. Mohammad Afzaul Shah Bakawee,p.519,520
17. Olaf Caroe, p.393
18. Richard Issaq Bruce, *The Forward Policy,* (Quetta:Gusha-i-Adab,1977), p.170
19. Dr.Latif Yad, *Pukhtanay Qabilay Wapizanai,* (www.Khyber .org), p.166
20. Interview with Ihsan Dawar, a season journalist and analyst from Mir Ali (NWA), 20 Feb, 2106
21. Ibid, 20 Feb, 2016
22. L. White King, *The Orakzai Country & Clans*, (Lahore: Vanguard Book Ltd,1984), p.133, 134
23. Colonel H C Wylly, p.234
24. Dr. S.Iftihar, p.15
25. Colonel H C Wylly, p.272
26. Khan Barmazid, *History of Pashtuns,* available atwww.barmazid.com/2015/12/a-note-on-turi-tribe_9.html
27. Colonel H C Wylly, p.273
28. Mohammad Afzaul Shah Bakawee, p.501-504
29. Colonel H C Wylly, p.178.179
30. Shams Momand, *Mohmand Qabail –Aj aur Kal,* (Peshawar: Khuram Printers) ,2006, p.45,47
31. Colonel H C Wylly, p.150
32. Dr.Taj Muhammad Wazir, p.98-106
33. Interview with Malik Abdul Ghanoor Dawar, Hassu khel (NWA), Jan 20, 2017.
34. The Amended Frontier Crimes Regulation, 1901

35. Dr.Taj Muhammad Wazir, p.118,119
36. Philip Carlan, Lisa S. Nored, Regan A. downey, *Introduction to Criminal Law,* (Massachusetts: Jones & Barlett Publishers, 2011), p.3,4
37. Khan Abdul Ghani Khan, *The Pathan,* available at http://pdfbooksfree.pk/the-pathan-by-khan-abdul-ghani-khan/, p.28, accessed on 16 June, 2016.
38. Interview with Naushar Khan, Feb. 15, 2015.
39. Interviews with Ahmad Khan Orakzai, April 8, 2015 and Naushar Khan, Feb. 15, 2015.
40. Interviews with Malik Daud Jan, Hassu khel (NWA), Sept 11, 2016 and Ihsan Dawar (NWA), Feb 20, 2016.
41. Maulana Abdul Qader,*Muqadma on the book, The Pathan by Olaf Caroe*, (Peshawar: Pashto Academy University of Peshawar, Nd), p.26-29
42. Interview with Jan Muhammad, a University fellow from North Waziristan and a government servant, 15 Feb, 2015
43. Dr.Taj Muhammad Wazir, p.44
44. Engineer Abdul Qayum Afridi, *The Hill Tribes along the Durand line,* (Peshawar: IRIS Enterprises, 2003), p.21-23
45. Khan Abdul Ghani Khan, p.3
46. Noor ul Ameen, *Pakhto, Pakhtun aur Pakhtunwali,* (Swabi: Sharoom printing press, 2015), p.85,86
47. Anand, *Early Vedic Age: Origin, Social life, Economic life, Culture and religion*, available at http://www.historydiscussion.net/vedic-age/early-vedic-age-origin-social-life-economic-life-culture-and-religion/3013, accessed on July 2, 2016.
48. Ibid

49. Dr.Hanif Khalil*, Pashtoon Culture in Pashto Tappa,* (Islamabad: National Institute of Historical & Cultural Research Quaid-i-Azam University, Nd),p.36
50. H W Bellew, *The Races of Afghanistan*, (Calcutta: Thacker Spink & Co,1979), p.58
51. Khan Abdul Ghani Khan, p.3,4
52. Maulana Abdul Qader, p.26-29
53. Noor ul Ameen, p.96
54. Tipu Muhabat Khan, p.71
55. Dr.Hanif Khalil, p.124-126
56. Dr.Sher Zaman Taizi, *Jirga System in Tribal Life,* (Peshawar: Area Study Center University of Peshawar), April, 2007, p.5
57. Interview with Naushar Khan, Feb. 15, 2015.
58. Sher Muhammad Mohmand, *FATA: Socio-Cultural and Geo-Political History*, (Np.Nd),p.270
59. Dr.Sultan-i-Rome, *Land Ownership in Swat, historical and contemporary perspective,*available at www.valleyswat.net/literature/papers/Land ownership in Swat.pdf, accessed on 20 September, 2016.
60. Noor ul Ameen, p.114
61. Tipu Muhabat Khan, p.71,72
62. Ali Wardak, *Jirga-a Traditional Mechanism of Conflict Resolution in Afghanistan,* available atfile:///C:/Users/Shafqat%20Sharif/Downloads/UNPAN017434.pdf, accessed on 21 September, 2016
63. *Traditional Mechanism of Conflict Resolution: An analysis of jirga in Pakhtoon Society,* a topic chosen for International conference held in Government College, Lahore dated Nov 12-14, 2014, accessed on October 8, 2016.

64. Tipu Muhabat Khan, p.73-77
65. Syed Abdul Qaddus, *The North West Frontier of Pakistan*, (Karachi: Royal book Company, 1990), p.136-140
66. Noor ul Ameen, p.107,108
67. Dr.Hanif Khalil, p.65,66
68. Engineer Abdul Qayum Afridi, p.80
69. Ghulam Qader Khan Dawar, *Cheegha, the call*, (Sweden: I. Aleph, 2014), p.132
70. Engineer Abdul Qayum Afridi, p.77 and Interview with Naushar khan, Feb 15, 2015.
71. Interview with Ahmad Khan Orakzai, 08 April, 2015.
72. Interview with Malik Abdul Ghanoor Dawar, Hassu khel (NWA), Jan 20, 2017.
73. Ali Wardak, p.3
74. Noor ul Ameen, p.111
75. Engineer Abdul Qayum Afridi, p.70,71
76. Amended Frontier Crimes Regulation, 1901
77. *The Jirga: Justice and Conflict transformation*,(Islamabad: Community Appraisal & Motivation Program (CAMP), March 2012), p.8
78. Interviews with Malik Abdul Ghanoor Dawar, Jan 20, 2017 and Malik Khan Afzal Afridi (Qambar Khel, Khyber Agency), Jan 10, 2017.
79. J W Spain, The Way of the Pathan, (London: Robert Hald Ltd, 1962), p.50,51
80. Interviews with Ahmad Khan Orakzai, 08 April, 2015 and Naushar khan, Feb 15, 2015.
81. Ali Wardak, p.11
82. Interviews with Ahmad Khan Orakzai, 08 April, 2015 and Ihsan Dawar, Feb 20, 2016.
83. Ali Wardak, p.13 andNoor ul Ameen, p.114

84. Dr. Zalmai Khalilzad, *Remarks on the Eve of the Constitutional Loya Jirga*, 2003, available athttps://2001-2009.state.gov/p/sca/rls/rm/27249.htm, accessed on 16 July 2017.
85. *Afghanistan's Loya Jirga* available athttp://www.bbc.com/news/world-asia-25024163
86. Interviews with Rahimullah Yousafzai, the Chief Editor, the Daily News, Peshawar and Ihsan Dawar, the Journalist on 11.06.2017.
87. Ali Wardak, p.6-8
88. Interview with Malik Daud Jan Dawar, Sept 11, 2016.
89. Interviews with Ahmad Khan Orakzai, 08 April, 2015, Malik Usman Dawar, Jan 10.2016, Malik Zahoor (Kurram Agency), March 5, 2015.
90. *The Jirga: Justice and Conflict transformation*, (Islamabad: CAMP, March 2012), p.10-14
91. Ali Wardak, p.10
92. David G. Mandelbaun, *Polyandry in Kota Society,* 1938*,* available atonlinelibrary.wiley.com/doi/10.1525/aa.1938.40.4.02a, accessed on 10 Oct, 2016.
93. Interviews with Ahmad Khan Orakzai, 08 April, 2015 and Naushar khan, Feb 15, 2015.
94. Interview with Ahmad Khan Orakzai, 08 April, 2015 and Tipu Muhabat Khan, p. 179
95. Olaf Caroe, p.396

CHAPTER 2

RIWAJ IN ACTION

This chapter sheds light on the applications, procedures and customary variations of different tribes which they apply in *Riwaj* mechanism of dispute resolution. Though the fundamental principles of *Riwaj* have been deduced from *Pashtunwali* and have universal application on all tribes, yet the procedures may vary from tribe to tribe that have been highlighted in this work by giving examples of decisions taken by elders of the council. As already mentioned, *Riwaj* is un-codified and the decisions of the *Jirga* and *maraka* are usually based on the collective wisdom of the elders having no relation to any formal legal framework; therefore, their legality may be challenged and debated upon. On the contrary, *FCR*, which is said to have been formulated in the light of *Riwaj,* has provided a defective legal framework and has a limited scope and application in the tribal life. It deals with disputes which are referred to the political administration in the protected areas or if the political officer intervenes himself in the arena due to severity of the problem that can cause a threat to or has ramifications for the administration.

Most of the issues in tribal areas pertain to land, woman and wealth which are called *Zameen* (land), *Zan* (woman) and *Zar* (wealth) in Persian language respectively.[1]Land is scarce in the tribal areas. The available land is either barren or divided into small holdings. It produces wheat, maize, rice and sugar-cane only and has little productivity to cater for the needs and consumption of the tribesmen. Some parts of the tribal areas are green and fertile

enough to produce vegetables and fruits such as potatoes, tomatoes, onions, lady-fingers as well as apples, guava, grapes and pomegranate etc. which fulfil the local demand. As there is no land settlement in most of the tribal areas, there occurs more disputes on land among the tribesmen. As has discussed earlier, major chunk of the tribal territory counts to be hilly that seems ostensibly to be mere red and barren stuff to look at. The tribesmen use the hills as pastures for animal herds and its trees as source of woods for burning in the winter and making furniture; therefore, they fight on the ownership of the mountains for years. Nevertheless, the recent research proves that the hills of the tribal areas are the undiscovered treasures that exist in their homeland. In addition, disputes on houses, pathways, trees, crops, animals and water also fall under the ambit of disputes on *Zameen.*

Zan, woman is something sacrosanct upon which disputes arise among the tribesmen. A woman is an honour of the man whom, if defiled, leads to the dishonour of his family. Though she is confined to home, yet a lustful eye on her while going to fetch water from *Gudar* or fodder for animals from the fields and mountains cause harm to her '*Haya*' that results in honour killings. *Zar* has a wide connotation and involves many areas of disputes. Usually, the tribesmen fall out among themselves on business transactions, debt payments, visas, award of tender, lease and amount of the mortgaged property etc.

Apart from *Zameen*, *Zan* and *Zar*, disputes on *Hamsaya*, protection of guest and children do arise among the tribesmen of the borderland that are resolved through Riwaj to maintain peaceful social order in the society.

While warming up hands to start writing on *Riwaj*, I thought, Riwaj was absolutely unwritten legal framework

existing in the tribal areas of Pakistan. After reading its relevant literature I came across many a valuable works on *Riwaj* which provided me reasonable guidance and assistance. I found that efforts had been made at times by different people to compile *Riwaj*. For instance, Hayat-e-Afghani, which exists in the name of Tarikh-e-Peshawar, was authored by Muhammad Hayat Khan, the then Extra Assistant Commissioner, Bannu in 1860 which embodies several sections providing the basic legal framework of the Waziri Riwaj. It must be mentioned that Waziri Riwaj refers to the customary laws of the tribes in Waziristan. No doubt, it is the first ever written work on Waziri Riwaj but it contains fewer sections to provide solutions to all disputes and emergent issues of the tribesmen. No efforts have been made by research scholars, the tribesmen and the respective governments to keep it updated and change it in accordance with the changing global environment. There are certain sections of Hayat-e-Afghani which are either obsolete or their applications cannot be made in disputes in the current scenario of the tribal areas.[2]

The story of Kurram Riwaj varies from Waziri Riwaj. Riwaj-e-Kurram was compiled by Abdur Rashid Khan, the then assistant political officer, Kurram under the supervision of Colonel W. C. Leaper, the then political agent, Kurram in 1944 which was translated into Urdu language in 1948 as desired by Colonel W. C. Leaper. Riwaj-e-Kurram is known as *Turizona* after the name of Turi tribe and encapsulates the best customary laws of the Turi tribe that have been ratified by all tribes of the Kurram Agency. However, it will be out of place to say that it is complete in all respects and has universal application on all tribes, for it doesn't provide solutions to

all disputes emerging at times in Kurram society. *Riwaj* is not static and undergoes changes with the passage of time; therefore, it has changed a lot particularly in the context of the *Narkh* and numbers of individuals taking oaths prevailing at the time of the British Government. Nevertheless, the changes occurred in the Kurram Riwaj have never been codified due to which the *Riwajyan* are at liberty to resolve disputes as they desire.[3] By and large, the Kurram Riwaj provides the cornerstone upon which the edifice of uniform codified *Riwaj* can be erected. Moreover, Apriday *Layar* and Orakzai Riwaj have almost similar applications in dispute resolution perhaps due to the fact that Tirah valley is the abode of both the Afridi and Orakzai tribes. The *Riwaj* of Mohmand, UthmanKhel and Tarklanrhi tribes of Mohmand and Bajaur Agencies respectively have almost similar principles, yet there exists subtle variations in the sub-tribes, perhaps due to their governance system under the state rule before their annexation to Pakistan. It must be mentioned here that *Riwaj* in civil disputes have almost similar applications and procedures in all tribes of FATA.

Following are some of the actions undertaken and verdicts issued by the elders and tribesmen under the prevailing local customs and usages which portray the importance of *Riwaj* for the maintenance of social order and promotion of peace and harmony in the tribal society before the advent of Talibanization.

2.1. Child protection in Riwaj

In a tribal society, a child and a woman are two inmates who are more secure and protected than anyone else. Children are considered as saplings growing and blossoming in the spring that would give beauty and

fruits. Their blunders are ignored and borne, if any. A child can move freely even if his family has severe enmity and all the male members are the hot targets of the enemy. A child can burgle into a fruit garden or violate the sanctity of something sacrosanct, albeit, he is not supposed to involve in such undesirable activity or bears misconduct, for it goes against the tribal norms to have brought up one's child as such. If a child commits murder he is always forgiven being innocent and angel-like. In short, child is always protected against all odds in life. In such an environment, a man left this mundane world in a Dawar's village of Musaki near Mir Ali Bazaar. He had a male baby left in the lap of his widow. According to the *Riwaj* of the tribe, the widow was required to marry the brother or any other paternal close kindred of her husband, but the deceased had no real brother; therefore, his family allowed her to marry elsewhere. The widow got remarried to a person in village Hassu-khel who accepted his newly married bride along with the baby in order to protect the child from adversity of time. The child grew in the house of his step-father under the vigilance of her own mother. His step-father nourished him to grow like his real son and gave him share in inherited property. Since my childhood, I didn't know he was not the real brother of Malik Sherin Dil Khan. It must be mentioned that the step-father was not bound under Riwaj to give share to his step-son in any moveable and immoveable property.

As mentioned earlier, a child is never subjected to enmity in *Riwaj;* Waqar, a child of almost seven years was fired at and injured by his enemy, Gul Ayaz khan in village Hassu-khel. The incidence spread like a wildfire in the folks and *khels* of the Dawar tribe and was widely condemned by the tribesmen. Immediately after the gruesome incident, the *Dhamman* started beating

dandora and announced that a *maraka* would be held to take action against the perpetrators who made a life attempt on a child and injured him severely. The elders and the armed men of the tribe gathered in the *Eid Gah* of the village Hassu-khel and decided to demolish his mud-built house. Gul Ayaz Khan was warned in the first instance to vacate the house so that the decision of the *maraka* might be implemented but the warning fell on the deaf ears. Gul Ayaz khan and his brothers were really stiff men and were known for their intrepidity. They were known bandits of the time and had caused tremendous terror among the people, but their bravery and chivalry had no match before the armed men of the tribe. The *Lashkar* attacked them from all sides and were forced to surrender. During the ambush, Matareeni, an undaunted man of the *Lashkar*, tried to climb on the wall to fall upon the person sitting in the *Morcha*, a post constructed on the top of the two walls of the house having holes on all sides to point on the enemy, if any, and to stop him or kill him at point in times. A man inside the *Morcha* saw him and shot him pushed to the ground. However, Gul Ayaz Khan and his brothers surrendered on the advice of the jirgamen and allowed the *Lashkar* to burn and demolish their house. The *jirgamar* also decided that they would be permitted to reconstruct their house without any harm by their enemies. Here also one can differentiate between the roles played by *maraka* and *Jirga. Maraka* of the *khel* took action against the oppressors and *Jirga* of the elders resolved the dispute in order to shun any blood-shed as a result of the armed action.

The *Riwaj* of child protection was beneficial for all, for it gave a message that a child would be protected at all cost. It also gave an opportunity to Gul Ayaz Khan to reconstruct his house which was in a dilapidated condition and could not be renovated or constructed due

to the fear of his enemies. In fact, it was not only a *Riwaj* that worked, but a natural justice delivered to the victim's family -a justice very cheap and speedy dispensed by the people themselves. The marching of a *Lashkar* was not a decision undertaken in haste or based on emotions but a well-thought action by the elders of the tribe to punish the cruel and protect the rights of children.[4]

It is reiterated that no harm can be done to a child even if he commits a murder or injures a tribeman. In Kurram *Riwaj*, if a child less than twelve years old kills or injures someone, his legal heirs shall pay half of the blood-money or compensation of injuries. If he has no legal heirs the loss shall be met out from his legal assets, if he has any. If he is instigated to commit the crime and the guilt of instigation gets proved against the instigator, he shall pay full amount of the compensation in addition to the amount of *Sharmana* and *Nanawate* of elders. If the guilt doesn't prove he'll be absolved from the case. In case of *Shuba*, the accused has the right of oath on Quran to prove that he is innocent.[5] In Apriday *Layar*, if the child is five years or less and commits a murder or injures someone, no revenge is taken from or liability raised against him. If he is more than five years and commits such a crime it is discerned whether it was his own act or was committed by instigation. If it proves that he was instigated to commit the guilt, the victim's family takes revenge from the instigator and leaves the child unharmed. In Waziristan, *Riwaj* has almost the same application.[6]

If we practically compare the child protection rights embodied in the statutory laws with the *Riwaj* of the

tribesmen, one can see the sublimity of *Riwaj* in the protection of children's rights. I have seen blossoming flowers in the juvenile barrack of the central prison Peshawar who lament for their liberty and groan under the unbearable and disgusting conditions of jail, let alone the naughty activities which they would carry out if they would be living in a free world. Their rights are being repressed on a daily basis by the jail authorities and the senior *numberdar* – means the senior prisoners of rigorous imprisonment who have been assigned jail duties to look after the juveniles. There are hundreds of impoverished children who have been implicated in wrong cases and cannot afford to hire legal counsels to fight their cases due to which they have been convicted. There are hundreds of such children who have completed their punishment, yet they are not being released, for they cannot deposit their fine imposed by the courts. They have no tribe or *khel* to fight for. They have no elders to stand by when they are in trouble. They have no neighbours to look them after and fulfil their needs. I think the child in tribal area is fortunate enough to have been born there. He has a tribe and a *khel* to fight for his rights and neighbours to stand by when he needs their help. He doesn't need orphanage, if orphan, for it is the tribe which looks after him. He doesn't need the help of police to protect him against the vagabonds, for it is the *khel* which comes to protect him. Notwithstanding, the ratification of the Convention on the Rights of the Child on December 12, 1990, adoption of Child Marriage Restraint Act, 1929 and passing of Child Offender Act, 1995,the Government of Pakistan should have marked a significant milestone in the efforts to protect the fundamental human rights of the children in Pakistan[7] but all these measures have little

bearings on the child protection and children rights in the land of pure keeping in view the actual conditions of the children in the country. The reasons for indifference towards child rights perhaps lie, inter alia, in the non-existence of social taboos in the settled areas of Pakistan.

2.2. Honour for woman (Namoos)

In a tribal society, there is no mercy for enemies if it comes to a matter of honour for women. A tribeman can forgive the death of his father if he is killed mistakenly or unknowingly; he can compromise on his valuables if he knows it would avert his animosity without harming his honour and dignity but he cannot bear a finger rising towards his women. Woman is the lamp of the family, **Khaza da koor chiraagh dey,** as a Pashto proverb says. A woman is considered as '*Izat'* in the tribal society; therefore, any act or activity undertaken against her or any action taken by a woman in disregard to *Riwaj* (here *Riwaj* means customs) is presumed as *be-izati*, dishonour/debasement which results in *Badal* and is dealt with in the light of *Riwaj* (here *Riwaj* means conflict resolution mechanism).

A woman has a special status in the tribal society. She is not a chattel to be sold. She is neither a toy to play with nor just a medium of amusement as we generally see in other societies. She is a helping hand to men-folks in all walks of life. No doubt, she is bound to the four walls of her house and is supposed to cater for the household and looks after the children; but it doesn't mean she has no freedom to move out or is forced to be within the four walls only. She pays regular visits to her kith and kin and participates in all rituals. She helps the men folk in harvesting and irrigating of their lands. She moves out fetching water for watering animals and household members from '*Gudar*'- a well or a stream where

womenfolk get together making a queue, waiting for their turns to fill their pitchers. *Gudar* is a place very much known to every tribal, for it is where lovers meet to see each other. That's why *Gudar* is a word of romanticism for Pashtun poets and story-tellers. Same is the place of a green pasture in the foot of a hill with dense lofty trees of pines and deodar etc. where young girls and boys of the *khel* or older, aged folks, having no other business and source of a fun, go to graze their herds. As this world has occurred as a result of opposites, obviously when two opposite sex meet they would react. Same happened in the tribal area of South Waziristan, where a young man met his tragic fate when he was killed for honour and was treated, as a dog had been shot for his disgusting conduct.

A young girl was herding sheep in the mountains of South Waziristan. A dashing young guy was also wandering there striving to give an impression to the shepherd girl that he had fallen in love with. She realized he was molesting her. She brought it into the knowledge of her brother that the guy's immodest actions had perturbed her too much. It was like a sky fallen on his head to listen and bear. The devil set out serious efforts making the young tribal commit an honour killing of his tribeman. He needed a cause of action for which he had to keep eyes on the modus operandi of the guy. He spent many days to catch the guy red-handed in any objectionable position. One day his young sister took away her herd of sheep into the mountain and the guy, as in routine, chased her. She didn't know that her infuriated brother was hiding in the dense tree jungle and was watching how the maniac lover was behaving with his sister. The girl, getting tired of herding sheep, sat on a rock but left the rock in pursuit of the sheep. The boy, being scared as he was doing something wrong in a tribal culture, went to kiss/smell the

place where she was sitting. Her brother saw such an unbearable act of the young man that he could not think a little and shot him dead.

In *Riwaj,* killing someone needs explanation to be given to tribesmen. If it is a cold-blood murder it turns into a fierce and unending enmity. If it has some justified and acceptable cause of action, the matter is referred to a *Jirga* and is settled in accordance with *Riwaj*. The murderer, in the instant case, announced that he killed a dog rather than a tribeman. It was a strange cause of action in *Riwaj* which greatly afflicted the tribesmen. The matter was referred to the council of elders wherein the case was heard in detail. The murderer narrated his story in his defence before the *Jirga*. The *Jirgamen* issued their verdict and exonerated the murderer except imposing a fine to the extent of killing a dog presuming that the act/conduct of the guy was not less than a dog could do for which he was killed.

If we see the decision of the *Jirga* from legal and justice point of view, it seems to be quite awesome as it was based on the simple narration of the perpetrator having no solid and exhibitable evidence. Nevertheless, it must be taken for granted while studying tribal *Riwaj* that a tribeman can accept any loss and can compromise on anything, except his/her honour howsoever he/she is worst in habit or conduct. The murderer would have never killed him, had it not been linked to the honour of his sister. This was the basic philosophy behind the decision of the Jirga; in fact, a decision pure in essence, plain and upright. It was made on the basis of the collective wisdom of elders of the tribes in accordance with the customs and habits of the tribe, who were kith and kin of the disputants. The decision did not hurt the pride of the victim's family in the comity of *khels*, though it was a murder committed in broad daylight and would never be

in limbo for the aggrieved family keeping in view the characteristic of vengeance amongst the tribal. It is also argued that the victim could seek the hand of the girl in marriage instead of conducting the disgusting act which caused him to death. However, the decision of the *Jirga* is not a regular *Riwaj* that can be used as precedent in other murder cases, for it was a special condition caused by social action or the verdict issued by *Jirga* to maintain social order as Malik Abdul Ghanoor has mentioned in the definition of Riwaj.[8]

2.3. Honour killings in Riwaj

Honour killing is one of the striking features of *Pashtunwali* and has a special place in *Riwaj*. Any act of a tribeman that brings bad name to his family or any immodest act or gesture of a tribe woman due to which people can point finger at her chastity or character, can cause killing for honour in a tribal society, let alone hard-core sex between two opposite sexes. If a man and woman are caught in any objectionable position by their relatives, they are shot dead on the occasion without resorting to trial under *Riwaj* of all tribes. Besides, honour killings also occur on the basis of doubt or accusation (*Toor)* against a tribal man or woman. About honour killing Ghani Khan said, “A Pashtun cannot think of love without marriage. If he does so, he pays for it with his life. He is made with anger and he must shoot, there is no alternative. If he doesn’t, his brother will look down upon him, his father will sneer at him, his sister will avoid his eyes, his wife will be insolent and his friends will cut him dead. It is easier to be understood by a judge who doesn’t speak his language and be hanged by a law that doesn’t understand his life”.[9]There are many examples in

the tribal areas where the in-laws have killed their sisters' in-law/daughters in-law merely on the basis of allegation made against them by the mothers' in-law having some personal grudges with. It has also happened hundreds of times that a tribeman wants to settle score with his *tarbore* and tries to find some reasonable cause of action to kill him. To serve his purpose, he announces that his wife is molested by his *tarbore*; therefore, he is liable to be killed. He murders him accordingly and refers the case to a *Jirga*. If he succeeds to satisfy the elders of the council and the aggrieved family, he wins the case, if not, an un-ending enmity begins that lasts for decades.[10]

It is uttered with utmost confidence that the rape of a Pashtun tribe woman is like a suicide committed in utter desperation. I have never heard of raping a tribe woman by a tribeman in the tribal belt, perhaps due to the reason that tribeswomen spend their lives within the four walls of their houses and are not allowed to make merry-making with tribesmen. They have neither opportunity to go to markets for shopping, nor can they go to the nearby parks for amusement. However, the aged women of the folks come out of their houses for the fodder of their animal herds or bringing dry woods for burning in winter and cooking food. In 19th century, if a woman would get raped in Waziristan, the raped woman would not conceal the incident, for it would fall under the ambit of woman's consent, which would result in the killing of both the inmates; therefore, she would disclose it to her kinsfolk within three days, provided there would be no witnesses of the incident available. If the accused would deny the allegation the woman, along with her father, brother or husband if married, would take oath on the Holy Quran that she/they didn't accuse the tribeman to settle personal

scores with but to punish him for the disgusting act he committed. After administering the oath, the tribeman would get convicted for the crime and his nose or leg would be amputated as retribution. With the passage of time, this *Riwaj* in Waziristan underwent a change. In rape cases, both man and woman are killed without any discrimination if they are caught red handed. As far as allegation of rape is concerned, it doesn't come up as the tribe woman knows the outcome of the allegation; therefore, she keeps mum on the incident even if she comes across such a situation.[11]

In Kurram *Riwaj*, if a man is caught red handed with a woman during rape, both of them are killed on the spot. If the man escapes from the place of rape he is treated as a proclaimed offender and can be killed anytime. If the woman is killed on the occasion and the man escapes but is killed later on, the murderer along with his family members take ten oaths on the Quran that they had seen the accused raping the woman. If the woman escapes and denies her sin, her in-laws take ten oaths that the rape had occurred; therefore, they killed the accused. The woman is remarried twenty miles away from her ex-husband's house and the *Rasmana* is paid to her previous husband. In case of attempt of a rape, the rapist is killed while the woman is left unharmed. If the plaintiff agrees for reconciliation, the defender is absolved from the offence, provided he takes a *Nanawate* to the house of the plaintiff and pays double of the *Rasmana* for the contempt of honour he has committed against the tribeman. If the accused denies the offence the plaintiff produces two witnesses in support of his accusation, if not, the accused takes oath along with nine others that he is innocent. If the rape occurs at night, only the accused

proves his innocence by taking oath on Quran along with nine others. If a woman gets pregnant by a man who admits the allegation he will pay the price of the woman as per prevailing *Narkh*; however, he can deny the accusation by taking oath along with other five men of his family. In such a situation, the woman is given in the custody of the tribal *malik* who takes her care during her pregnancy; however, her aliment charges are borne by her in-laws.[12] Nevertheless, Section 30 (1), (2) of the amended *FCR* states, "a married woman who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband, is guilty of the offence of adultery, and shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both. Cognizance shall not be taken of an offence under this section unless a complaint has been made by the husband of the woman or in his absence by a person who had care of the woman on his behalf at the time when the offence was committed".[13] In fact, this section of *FCR* conflicts with the very *Riwaj* of almost all Pashtun tribes.

Most of honour killings occur as a result of elopement. No Pashtun, if sensible and mindful of one's honour, would sustain the social loss incurred as a result of woman's elopement. Thus, the concept of a woman, being honour of the family, is the social constraint which leads to honour killing. A Pashtun young man can love his dream girl only in dreams. In a Pashtun tribal society, men are not allowed to meet women wishfully or talk to them without some serious business. Further, due to arranged marriage and extended family system, men and women folks must be bored of getting wedded and becoming life partners which force them to think of taking the most

undesirable step of eloping which drag them into the mouth of death. They would prefer an ugly stuff out of a family instead of their own seemingly rotten flesh. It is a Pashto saying that one's own flesh is stinky for good. Their parents would never ask their children of their choice and love and would marry them to girls whom they would have never seen and vice versa. In fact, it is permitted by Islamic teachings as well as Pashtun customs and habits in principle but practically Pashtun parents avoid it and impose their decision while marrying their children especially women. Besides, illiteracy is another important reason that counts for elopement in the tribal areas. An illiterate tribal woman - simple, upright and sincere in love, easily comes into the tangle of a witty and clever man. She lives in foul's paradise of her paramour which makes her forced to elope and bring bad name to her family.

During 19th century and at the dawn of 20th century, if a married or unmarried woman would elope with a tribeman in Waziristan she would be killed and the man's nose or leg would be chopped off. In case the man would survive, family of the deceased woman would ask her husband to take action against the perpetrator or pay half of the blood-money of the woman. If he would take no action or pay the blood-money, the family of the woman would cut off his nose or leg in return. If the husband and family of the woman would agree for reconciliation with the offender, he would pay half of the blood-money of the woman which would be divided between the husband and the parental family on fifty-fifty percent basis. If the eloper would propose for reconciliation he would pay full blood-money in the shape of two young women to be given in *Swara* to the husband or the parental family of the eloped woman. In case of married woman, the husband would divorce her and the eloper would tie knot with. If the

eloper would hand over the woman, even then he would pay half of the blood money to her husband or family for their dishonour in the folk.[14]

Honour killing has no revenge on either side even in the 21th century. However, *Riwaj* varies from tribe to tribe in this regard. In Waziristan, if a married woman elopes, both man and woman are killed. If the man is killed and the woman escapes she can be killed anytime by her family. If a married woman runs away with a man from her father's house, her paternal family is held responsible for her immodest action; therefore, her paternal family takes action against the man and woman. If her paternal family fails to do so, her husband family can ask her paternal family to take action against the culprits; otherwise, they will take action against them. However, if the eloped girl reaches the house of the boy, she becomes the honour of the boy's family. If she elopes again from the boy's house with another man, her revenge is obligatory in *Riwaj* to be taken by the boy's family. The girl's family cannot kill the girl, for they know she is no more their daughter or sister, but the honour of their enemy - means the boy's family. In some tribes, the eloped girl, if caught by her in-laws, is handed over to her parents who kill her in accordance with *Riwaj* while the man is left to her in-laws to deal with. If a virgin blonde runs away with a young, dashing chap and are caught on the spot they are killed but if they escape, then *Riwaj* prefers to initiate the *Sulah* process for an amicable solution. The *Riwaj* of *Swara* exists in the tribal society as yet; however; it has diminished to a greater extent due to education and social awareness among the tribesmen.[15]

In Kurram *Riwaj*, if an unmarried virgin woman is eloped without her consent and is caught by her family with the man, both of them are killed. If the eloper is killed and the woman escapes, she is returned to her family who marries her to a place almost twenty miles away from her own *khel*. The *Rasmana* amount is equally divided between the family of the eloper being killed and her own family. If the eloper escapes, he is treated as absconder and can be killed anytime. However, if both the families agree for reconciliation, the eloper's family takes *Nanawate* to the woman's family and begs pardon for the obnoxious act of dishonour. Sometime, the missing of a woman becomes an enigma when her family slips to accuse someone wrong in the khel/tribe. In the instant case, the plaintiff is required to produce two witnesses in support of his accusation, if not, the accused takes oath along with ten men on the Quran that he is innocent. The accomplice in the offence has the same punishment as the real culprit.

If a married woman is eloped and is caught on the occasion with the man, both of them are killed. If the man is killed and the woman escapes, she is married twenty miles away of her ex-husband's house and the *Rasmana* received in lieu of her marriage is paid to her ex-husband as a make up for his dishonour. If the eloper denies the accusation, the plaintiff produces two witnesses thereof, if not, the accused presents half *Oyagona* (oath taking of 35 men).[16] If she escapes and marries to another man, her husband is liable to be killed in *Riwaj*. If she continues to marry time and again, all her husband up to seven men can be killed. If a woman gets pregnant and claims of two men to have mated her, one of them must be killed along with the woman. The other accused can be killed

unidentified at night or in the mountains which has no burden of proof on the aggrieved family.[17] In Waziristan if a woman is gang-raped and gets pregnant or otherwise, all the culprits can be killed or can be retaliated by dishonouring their women in revenge.[18] In case of elopement, *Apriday Layar* doesn't provide any space to the culprits and enjoins for killing of both the man and woman either by their respective families or by their joint action. If a woman has recourse to have sex willingly and gets pregnant, she is forced to expose the name(s) of the culprits out of which one can be killed to revenge for the heinous crime committed against the tribal woman.[19] In fact, honour killing is an acceptable norm in the entire Pashtun belt irrespective of the tribes or settled and tribal areas.

A beauty queen was caught red-handed by her father with a tribeman of the Orakzai tribe in a seducing position in the Orakzai Agency. She fled to the nearest check post of the frontier corps personnel who reported the incident to the political administration. The assistant political agent sought her consent as to whom she would like to be handed over. The girl said, "To Mamma (her maternal uncle)". The news spread like a wild fire in the Orakzai tribe. The menfolk of the girl's family couldn't bear the unpalatable news, took arms and besieged the boy's family. The information reached to the political administration which held a *Jirga* of the elders of the Orakzai tribe. The elders inquired the matter at length and found that the eloped girl was wedded (sold) by the maternal uncle on the third day of the incident. The *Jirga* decided that the accused could be killed, provided the

girl's family would announce the eloped girl as *Tora*- means blackened. But the girl's family didn't announce her *Tora*; therefore, the *Jirga* issued verdict in favour of the boy's family and acquitted him honourably. Had she been charged for elopement by her family she would have been killed along with the boy as per *Riwaj*. In fact, she got scot free due to her marriage with another tribeman who accepted her and refused to hand over his newly wedded wife to her parents for honour killing, notwithstanding her compromise on her chastity.

As have already been discussed in the first chapter, *FCR* is said to have been framed in accordance with *Riwaj.* When a matter of honour killing is reported to the political administration, a *jirga* is constituted which puts its findings in the light of local *Riwaj*. It has always been noticed that the killer has been left scot free for the reason that the deceased had committed an unpardonable act of harming the honour of the tribeman which was against *Pashtunwali.* The *jirga* recommends his amnesty to the political administration on the ground that the killing was in congruous with *Riwaj* and the killer can be released subject to a minor fine to uphold the sanctity of *FCR*. This *Riwaj* has been amended in FCR under Section 30 (1), (2) of the amended FCR henceforth.[20]

In fact, honour killing has no place in today's world; therefore, the civil society and secular political parties of Pakistan began to enact laws against honour killing and rape. In 2013, an anti-rape bill was brought by the Peoples Party Government which was bulldozed by the Council of Islamic Ideology on the plea that DNA test couldn't be used as primary source of evidence and could be used only as supporting evidence. On October 6,

2016, Senator Farhat ullah presented two bills of honour killing and rape in the joint sitting of the Parliament. Both the bills were passed unanimously. The striking feature of the honour killing's law, among other things, is the condemnation of the honour killing and a severe penalty of life imprisonment even if the close relatives of the murdered forgive his capital punishment. The enacted anti-rape law provides that anyone who rapes a minor, mentally and physically retarded person shall be liable for death penalty or life imprisonment. The law also allows in-camera trial and use of technology to record statements of the victims and the witnesses to avert their humiliation and risk involved as a result of court appearance. The law also deletes the provision of law of evidence that questions the character of the rape victim so that sex workers may not be excluded.[21] Nevertheless, the difference of honour killings in *Riwaj* and the statutory law needs to be comprehended. In *Riwaj* both sexes are destined to death for elopement, even in consentient sexual intercourse while the statutory laws provide for punishment of the murderer of the woman. If we analyse the law carefully it is the woman's family that suffers. The woman is killed and her murderer being brother, father or any other relative is arrested and sentenced to rigorous imprisonment. The man's family remains unaffected, for the statutory law doesn't bar marriage of consent and consentient sexual intercourse after puberty. In fact, it doesn't explain what will be the application of this law in FATA as it comes in conflict with the *Riwaj* of the tribesmen.

2.4. Patronage of orphans

As mentioned above, children are the most protected inmates in Pashtun society, but orphans are patronized in

a special manner. They are taken in patronage by their relatives immediately and their needs and necessities are fulfilled at door step. The tribesmen keep in mind the traditions of the Holy Prophet regarding orphans and take care of. If developed societies have opened orphanages and run them through charity, Pashtun tribesmen have opened their doors whole-heartedly for the orphans so that they may not be spoiled and become honourable citizens. In fact, land has always been a bone of contention among the tribesmen but the land and property of orphans are always safeguarded till the orphans reach the age of adolescence.

Ragul, a young man from Hurmaz village, was a driver by profession and was married to a young lady in village Hassu khel. Ragul had an enmity with his brother. He left his own *khel* due to fear of his enemy and migrated to our village Hassu khel. He sought asylum from a leading *malik* who agreed to grant him protection. He began to live under his protection along with his family. One fine morning, Ragul was coming out of his home when his enemy opened fire at him and was shot dead on the spot. His enemy fled away and took shelter in the neighbouring house. It was a very blunt act of his enemy and a sheer violation of the Pashtun code of conducts attacking Ragul who was in the protection of a tribal *malik* in a remote khel of the tribe. *Cheegha* was announced from loud speakers in mosques and drum-beaters started *dhole* - drum-beat of *Cheegha*. The tribesmen armed up and rushed towards the place of incident. According to the tribal *Riwaj*, the murderer had taken asylum in the house of a neighbour and was supposed to be safe. The people of the *khel* talked to the fellow tribeman to hand over the culprit but he refused as it was against *Riwaj* and thus against his *Nung/Naang*. The killer's family planned to gather the people of his own *khel*, Hurmaz who hurriedly

rushed to village Hassu-khel to evacuate their kinsman. Eventually the elders decided to leave the murderer unharmed as it was a matter of animosity between two brothers within the family. The murderer was handed over to his *khel* indeed but the widow and the orphan children of Ragul were taken into orphanage by the elders of Hassu-khel. The *khe l*of his enemy was categorically told that each and every young man of Hassu-khel was the patron of Ragul's family and any mistake, if repeated, against his sons would be retaliated for.

Time went on and the orphan children of Ragul set out towards their tender age and rehabilitation. One day, the well-wisher of Ragul came and informed the elders of Hassu-khel that the brother of Ragul had occupied the land of the orphans and was going to sell it. The elders sent a message to his brother to stop encroaching upon the rights of orphans or he would face the music. The elders of Hurmaz mounted pressure on his brother to stop selling of the land to which he acceded and made reconciliation with his nephews.[22]

2.5. Protection and religious liberties of minorities

No doubt, the geographical features of the tribal territory and the stiffness of the Pashtun tribal traditions have turned the tribesmen die-hard but their historical pluralism has made them mindful to protect the rights of the minorities and their religious liberties. We must admit the fact that the Pashtun tribal society is based on the concept of pluralism. It comprises a cluster of tribes having different sectarian and religious affinities, yet they live together in a friendly environment since time immemorial. The Hindus of Waziristan, the Sikhs of Khyber Agency and the Shia and Sunni of Kurram and Orakzai Agencies have special place in the history of

tribal areas. The Hindus of Waziristan were as tribal as Dawar and Wazir and the Sikhs of Khyber Agency are as Afridis as others are. They were Hindus and Sikh by religion but they were tribal Pashtuns and took pride to be Pashtuns. They were part and parcel of the tribes; therefore, they used to participate in all festivals and rituals of the tribes despite their religious divergence. Nevertheless, they didn't enter into matrimonial relations due to strict injunctions of Islam.

In fact, Hindus were in the money, but they were in minority in the tribal territory and used to be in the protection of someone strong in the *khel*. My grandmother used to narrate the stories of their cordial relations with Hindus. She said they would participate in the funeral rites and *happy Holi*, the *Eid* of Hindus in which they would throw vivid colours on one another. They would invite one another to feast on *Eid* days and would help one another in time of need and adversity. Same was the level of relation between Sunni and Shia in Kurram and Orakzai Agencies. The Sikh of Khyber Agency enjoyed this liberty and protection better than their Sikh brethren in the Indian Punjab. They would settle their disputes in accordance with *Riwaj,* for they were tribal Pashtuns entirely. *Riwaj* was the combination of the best habits and customs evolved by their ancestors before the advent of Islam. Never in history had it happened that any Sikh or Hindu was killed by a Muslim tribeman on the basis of religion. They were part of the tribe and *khel* whose revenge, if killed in cold blood, was social obligation upon the *khel* or family of the protector. [23] An amazing thing that needs to be contemplated over is that the blood-money of a Hindu was half of the Pashtun or, in other words, equal to the

blood-money of a woman in Waziristan. I inquired it from so many elders to confirm its reason for, but no one was sure about it and no one could satisfy me. However, Riwaj-i-Kurram take the Hindus as *Hamsaya* which shows that it was perhaps due to the social status they held that they had a blood money equal to that of woman in *Riwaj* of Waziristan.

2.6. Hospitality and protection of guests

Hospitality is one of the key elements of *Pashtunwali.* Guest is considered as the blessing of God and is received in a venerable manner. He is as welcomed as he has conquered the enemy fort in a battle, taking off his arms carrying on his shoulder, if any and let him sit on the head side of a *charpoy* pushing the pillows to his back for comfortable sitting. Water, tea and meals are served at once without asking whether he/she would like to take tea or meal[24]. James W Spain says, “Every guest is treated in accordance to the host’s affordability and status. In any event the host, how much distinguished a *malik* he may be, sits as an equal with his poorest guest and serves the meat with his own hand.” [25]

A guest is like a revered commodity or something very sacrosanct to the tribeman. Once he enters into the territory of the tribeman whom he is coming to meet or stay with, it becomes a liability for the host to pay whatever it is. The guest also feels protected as he knows he is in someone’s protection. Nobody can harm him as he is known to the people and any maltreatment is tantamount to damaging the pride of the host family which can cause enmity. Dr. Hanif Khalil refers to James. W. Spain’s observation about hospitality and states, “*melmastiya* also demands that the Pathan accords

protection to his guest and to all who claim it from him. In this regard *melmastiya* takes precedence over *Badal*, and even the enemy who comes seeking refuge must be granted it and defended against his pursuers. This custom was a constant irritant in the Pathan's relations with the British in the old days. The man proclaimed a criminal in Peshawar could flee to the hills and could not only expect, but demanded protection and sanctuary from every house he came to. A chief or a clan may accord general protection to a guest or stranger, undertaking to defend and be responsible for him while he is in the neighbourhood. This frequently signified by the giving of one of the chief's possessions, a dagger or some article of dress. The token reminds all who see it that the honour of the protector is intimately associated with the well-being of him who carries it".[26]

In the chilled weather of a winter, the pastoralists (*Kuchians*) of Afghanistan were passing nearby the Mohammad Khel village of Dawar's tribe in the wee hours of dawn towards the lower Dawar in the Tochi valley. Muhammad Fida, a young man from village Haider Khel was on his way towards Mohammad khel to meet his college friends. He was a student of FSc in Government College Miranshah, a handsome guy known to the whole college. The herd of sheep of the Kuchians was in the midst of the bridge on the river Tochi when some of the coward sheep jumped out of the bridge and fell down into the riverbed and died. The pastoralist shepherd marked his gun on Fida and shot him dead on the occasion. Kuchians also known as *Ghaljai* are known for their bravery and cruelty among the Pashtuns. The shepherd did not think for a moment that he was going to kill a human for taking the revenge of a sheep. An inhumane

act it was, the message reached to the *khel* of the host. *Cheegha* was announced in the Mohammad khel village about the killing of a guest by a shepherd; and that the shepherd should not be escaped at any cost was the general announcement. It was a call for taking vengeance of the host's honour, which was challenged by the *Kuchians*. Every man of the folk - young and old, taking up their arms reached the place of murder. Nevertheless, the murderer had escaped and had taken asylum in the nearby house. Here again, it was a matter of *Riwaj*. The asylum-giver was not ready to hand him over as it was against Riwaj to compel his guest, though murderer, to leave his house. Hence, he preferred to hand over the culprit to the political administration of Miranshah. It was an immeasurable damage caused to the host's pride to bear up -a shame which would have never been forgotten by folks of the tribe, had it not been restored. Therefore, the host family decided to restore its pride by attacking the shepherd in the prison of the political administration. It was a commitment and obligation of the tribesmen. The tribeman upheld the *Riwaj* of his forefathers and killed the shepherd in the prison inside the Miranshah Fort where the political agent holds office and resides. The act was a classic violation of the Frontier Crimes Regulations but was in consistence with the Tribal *Riwaj*. The political agent constituted a Jirga which decided that the killing of the murderer was a true justice dispensed to the soul of the deceased, Fida in accordance with *Riwaj*; though it was contrary to Frontier Crimes Regulations. However, the perpetrators were asked to pay fine to the administration levied by the political agent in order to save the sanctity of *FCR.*[27]

2.7. Rights of Neighbour and Hamsaya

Tribesmen live in extended family which is the basic unit in the social fabric of the society. They live within the same premises having gigantic fort-like built houses. All brothers and sisters, uncles, cousins and nephews and their children reside under the same roof. This concept of extended family emanates from the institution of marriage within the same family wherein cousins marry cousins, etc. Even if there is any separation of houses on account of the division of property, they prefer to have a residence within the same premises. They will have a joint *Hujra* wherein guests are received and hospitality extended jointly. If the host is not present, the guest is attended by others with proper respect, giving the impression that he has come to a right place. Sometimes, a family gets extended to such an extent that it turns into *khel*. Here also one can find a joint *Hujra* where people of the *khel* perform all rituals and traditions jointly.

Apart from *Hujra*, tribesmen must have a joint mosque where they pray behind the Imam and perform religious rituals all together. The mosque is a place wherein they pray and hold *Jirga* and settle disputes. *Khels* which have no *Hujra* and *mosque* are looked down upon and considered as the outcaste and niggard. However, they are not disallowed to use the *Hujra* or mosque of the other *khel*, if needed to. The concept of extended family, joint *Hujra*, joint mosque and the sense of belonging to their tribes have proved to be a major factor which has led to the protection of neighbour's rights in the tribal *Riwaj.*

It is worthy to note that there is a difference between a neighbour and *Hamsaya*. The neighbour must be a close kin in a tribal society. His grievances and tribulations are duly shared with. The poor neighbour is helped out in all respects. His needs - food, clothes and shelter are

catered for by the haves. It must be mentioned that rivalry and jealousy do exist which have greatly affected the tribal life, even then an impoverished neighbour is not left in the lurch at all. If the neighbour is not a part of the family and resides in a rented house as tenant, he is called *Hamsaya*. His needs are looked after appropriately by the owner of the house - the renter. However, if the *Hamsaya* doesn't hail from the *khel* and has taken asylum, all his needs are fulfilled, yet he has to live in accordance with the local *Riwaj*. Besides, he has to show his identity by providing the detail of his family tree or the pedigree of his ancestors. He receives equal treatment from the folks of the *khel* but he knows his real status, if sensible enough, to accommodate himself in a way which doesn't umbrage the protector. The *Hamsaya*, who has availed protection, is the liability of the family or *khel*. He has safety and security from all odds till he follows the tribal norms and lives in peace. His enemy cannot harm him within the limits of the *khel*. The people of the *khel* also take due care of him and protect him, provided he does no wrong. Nevertheless, if he commits any wrong to any folk of the khel/tribe, he is kicked out without any delay, for it can be considered as a wrong on the part of the *Naik*. *Panah* is said to be for two years in the *Riwaj* of tribes of Khyber, Mohmand and Bajaur agencies.[28]

Kurram Riwaj has defined the *Hamsaya* explicitly which can be referred to when a dispute over their rights, status or obligations emerge. All the occupational groups such as the carpenters, potters, black smiths, cobblers, drum-beaters, Hindus, Paracha (a Hindu convert), tenants, absconder and Ghaljai (Afghan nomads) fall within the definition of *Hamsaya*. The *Hamsaya* serve the Naik during his marriage or mourning rituals and ensures his

presence by contributing in monetary terms to his *Naik,* provided an agreement exists between them to this effect. If a dispute arises between the *Naik* and the *Hamsaya*, the former produces two witnesses, if not; the latter takes oath along with two other close kinsmen that he is not under his protection. If he fails to prove himself that he is not in protection of the plaintiff, he will pay a *Sharmana* and will send a *Nanawate* to the house of his *Naik* seeking pardon for challenging his status as *Hamsaya*. It must be mentioned that if a Pashtun *Hamsaya*, not falling among the occupational groups, temporarily leaves his *Naik*, comes back and stays under the protection of another *Naik*, his previous *Naik* cannot claim against his protection under a new *Naik*; however, a non-Pashtun *Hamsaya* cannot remain under the protection of a new *Naik.* If he comes back, he will remain under the protection of the old *Naik*.

Kurram *Riwaj* is different from the *Riwaj* of other tribes in the sense that it does not provide asylum to a murderer and a proclaimed offender. If a tribeman is alleged to have provided asylum to criminals, he has to prove himself innocent by taking oath along with two kinsmen; however, his punishment depends upon the court of the political agent. *Riwaj* of *Hamsaya* has similar application in Orakzai Riwaj.[29]

I remember the story of our *Hamsaya,* Jabber Khan alias Jabbarai who had taken asylum with my father because of his enmity with Malik Rambel Khan of Epi, a village at the entrance of North Waziristan just at a stone's throw of the Kajori Gate. Jabber Khan was a dashing man of high calibre and was known for his bravery. His enemy, Rambel khan was also famous for his manful deeds; therefore, Jabber khan would fear his retaliation. Jabber

khan used to spend the whole night along with his wife, Kalandara - a woman of eminence, watching the movements of enemies, if any. In fact, I have never seen such a tigress-like woman in my life, having such a marital commitment to her husband. Spending of night for security (*Pehra*) was a routine for Jabber khan. By then, he contemplated a plan of shifting the security concern to his protector, i.e. my father. He started throwing stones in midnight to our house which made my father alert thinking that there might be some thieves or enemies of Jabber khan. My father was known for his sincerity, uprightness and generosity. He was being considered as the best protector of his *Hamsaya* and used to fight for their protection. Being a credulous person as he was, he awakened my mother telling her the pelting of stones to our house. They went to all corners of the house looking around for thieves and enemies of Jabber khan but nothing could be found as it was a cagey plan of Jabber khan passing the buck of security from himself. Since then, my father became a regular watchman of the street also.

The plan succeeded for a long time and Jabber khan and his family would asleep, for they had no security concern then. One day Muradal, another *Hamsaya* of my father and also a maternal relative, had seen this obnoxious act of Jabber khan in the midnight. His cagey plan disclosed when Muradal told my father about the throwing of stones at midnight and the saga of thieves and Jabber khan's enemies. The act of Jabber khan was, in fact, the flouting of the Pashtun's norms, but he was a *Hamsaya* and a close friend of my father; therefore, his falsehood was ignored and forgiven. Jabber Khan and Muradal were not only provided asylum in free, they were also given some irrigated lands to cultivate for their food security.

To sum up, there are many instances in tribal areas where the revenge of *Hamsaya* has been taken by the protector and has resulted in endless tribal or *khel* feuds which continue for decades.

2.8. Badal in Riwaj

Badal, revenge is one of the horrible features of the Pashtun's way of life in general and the tribal's life in particular. It has a special place in *Pashtunwali* which signifies the importance of an individual, family or *khel* within the tribe. *Badal* is an act undertaken by a tribeman to settle scores with his enemy and restore the honour which he/she perceives to have lost on account of a deliberate harm done to his/her honour. That's why a tribeman says, ***Dalta dum aw kadam dwarha pa hisab di***, means every wrong is avenged on earth. A tribeman can afford any loss, but he cannot compromise on his honour and pride which he has earned or earned by his forefather during the currency of his life. *Badal* is a requirement within the ambit of Riwaj and any excess committed by a tribeman in taking revenge is condemned and depreciates his honour in the *khel* and the tribe. In Riwaj, *Badal* is based on the Islamic concept of nose for nose, ear for ear and eye for eye. A Pashto proverb says, ***Badal pa Badal Khalasegi,*** means *Badal* ends with *Badal* for which the phrase, tit for tat, may be used in English. *Badal* is also called *'Por/Peir'* in Pashto, which means debt/payables. If the debt is left unpaid it becomes a *paighore* that becomes a cause of humiliation for the murdered's family. He becomes restless and doesn't eat drink and sleep until he takes *Bada*l from his enemy. The tribeman who takes revenge is called *Ghairatee/Nungialy*, for he keeps the honour of his family/clan at the cost of his life. Khushal Khan, the great Pashto poet says in his couplet that "he fastened his sword to the honour of the Afghan and he is the first highest upholder of the honour

of that era". James W Spain writes, "The first and the greatest commandment of *Pashtunwali* is *Badal*, revenge. The obligation to take revenge for a wrong, real or fancied, falls not only upon the man who suffered it but also upon his family and his tribe. Neither the law of Pakistan nor that of imperial Britain has ever held sway in the tribal territory. Hence, revenge there is uninhibited and, since both insult and retaliation involve clans as well as individuals, the blood feud flourishes. Some feuds which are alive today were generations old when the Hatfield and the Coys exchanged their first shots."[30]

Badal cannot be restricted to a killing in cold-blood only. *Badal* is taken for a trivial matter, even for a word spoken in disregard to the honour of the tribeman. A cold-blood murder leads to an unending enmity, even if it has been committed by the strongest among the tribesmen. The weakest of the tribesmen has the right and courage to take *Badal* from the strongest of the tribesmen with impunity. Such an enmity continues unabated and long lasts for years and years. A tribeman takes *Badal* after two decades; his *tarbore* would say it was a vengeance in haste. A Pashto proverb says, ***Bud sarhi ta khe khe khabare waya pa wroro, bekh buniad ye wobasa la saraya pa wroro***, means Speak gently and softly to your enemy; gradually destroy him root and branch.
In fact, *Badal* is purposefully delayed with the intention that his enemy would die twenty four hours and seven days a week and would lose whatever he possesses while sitting home doing nothing. However, *Riwaj* provides for reconciliation and expedience in a cold blood murder case for those members of the family who are not accomplice in the murder. The *khel* of the *Sur Lassai*, means a person whose hands are red with blood,

constitute a *Jirga* comprising elders, mullahs, pirs and fakirs; walk into the graveyard of the murdered; jumped into the grave surrendering themselves to the victim's family and beg pardon for the wrong on their part. In most of the cases, the act of murder is pardoned off (*Bakhal / Bakhshal*), provided the murdered family knows that the hands of other family fellows are tidy in all respects. The murderer's family ensures that they have neither perpetrated the act of murder, nor accomplice to it, nor informed of committing the murder by their kinsmen. By and large, enmity continues ceaselessly for years and involves much bloodshed. At times, if one of the enemies gets weakened and exhausted or is persuaded by his well-wishers to end his animosity and lead a peaceful life again, he gathers all his well-wishers, mullahs, pirs and fakirs of his tribe and walks into the house of his enemy without intimation to his counterpart and begs for pardon. Such an act is against the elements of honour in the Pashtun society and is taken for granted, but is accepted as a step taken to avoid bloodshed in their progeny. It might be a hard time for his counterpart to forgive him, but in *Riwaj,* if an enemy comes to one's house and begs pardon, he forgives him even if his heart sheds with blood and eyes tear down his cheeks. It is where the obnoxious practice of Swara happens in which a daughter/sister of the murderer's family is married to any male member of the aggrieved family, which guarantees the end of enmity as well as the surrender of the enemy and downing of his pride. The enmity may also end if *Badal* of the murder is taken and the honour lost to the tribeman is restored. Sometimes, enmity ends when the warring factions come to terms on the basis of payment of blood-money to the bereaved family. [31] James W Spain writes, "In the

nineteenth century a life was usually worth 360 rupees. In 1962 when the author wrote this book, the figure of blood-money was 7700 rupees". [32] Naushar Khan, a retired political officer says that the compensation amounts for the murder of man and woman were Rs.1200 and Rs.600 respectively in Waziri Riwaj during 19th century. In Riwaj-e-Kurram it was Rs.2000 for both man and woman. The amount of blood-money has highly escalated in today's tribal areas. It ranges from Rs.200000/- to Rs.1200000/- perhaps depends on the status of the murdered or the financial affordability of the murderer. [33] It must be clarified here that revenge can be escaped in the offence of killing of a father by his delinquent son and vice versa; and an un-married brother by his own brother, for he has no avenger except the murderer himself. It happens very rare in the tribal areas, for it becomes a taunt for the killer and carries it with until he dies a natural death.[34]

In Waziri Riwaj, if a man gets injured at the hands of his fellow tribeman mistakenly, the latter takes *Nanawate* to his house and seeks forgiveness which is usually accepted. If he is deliberately injured, his revenge becomes obligatory. If the injured gets handicapped, the accused's family takes *Nanawate* to the house of the victim and pays compensation in accordance with Riwaj, provided that the aggrieved family accepts the *Nanawate*, agrees for conciliation and doesn't opt to avenge for. If the accused denies to have committed the offence intentionally, the plaintiff needs to produce two witnesses that he has been injured deliberately, if not, the defendant will take oath to have injured the tribeman mistakenly. In case of doubtful murder, if the murderer (defendant)

denies to have committed the murder, the murdered's family (plaintiff) produces two witnesses, if not, hundred men of the murderer's family, including the murder take oaths to prove their innocence or as decided by the Jirga. In case of woman, fifty men of the murderer's family will prove their innocence through oaths on Quran.[35]

In Kurram Riwaj, if the murderer is arrested and convicted by the court of the political agent, his family pays blood-money to the aggrieved family and the murderer is sentenced to fourteen years rigorous punishment by the political agent. If he denies the murder, the murderer's family provides two witnesses against him, if not, seventy members of the murderer's family including the murderer, or as decided by the Jirga, take oath on the Holy Quran to prove their innocence which is called *Oyagona*. The accomplice is construed as a guilty; however, he can prove himself innocent by taking oath of *Oyagona* as mentioned above. If the accomplices are more than one, they can absolve themselves from the murder if ten men including the accomplices take oaths on the Holy Quran. If the murder occurs in the forest, mountain or at night and the murderer is convicted, he is liable to receive the same punishment as mentioned above. If he denies the accusation he has to prove himself innocent by resorting to *Oyagona*. If the murder happens as a result of venomous substance and the guilt is proved, the murderer is liable to the same retribution as determined for a real murderer. If the murderer denies the guilt, the aggrieved family produces two witnesses in support of its claim, if not, the accused takes oaths along with 35 others of his family (*half oyagona*) to prove themselves innocent, provided that the guilt is proved by a medical report.

Sometimes, the injured sustains injuries and gets recovered. In the instant case, if the guilt proves, the accused pays half of the blood-money. If the accused denies the offence, being committed in broad-daylight, the plaintiff produces two witnesses in support of his accusation, if not; the defendant resorts to *half Oyagona* to prove his innocence. If a murder occurs at night and the plaintiff accuses someone on the basis of doubt, the plaintiff doesn't need to produce witnesses, only the accused has to go through the process of *half oyagona*. In case of injured, compensation is paid or *half Oyagona* is administered, provided he is handicapped. If he sustains injuries to be healed from easily, only five men's oaths are administered. [36]

In Apriday *Layar*, the concept of *Badal* is as rigid as Waziri Riwaj. The aggrieved family doesn't leave any stone unturned to take *Badal* of the murder. The amount of the blood-money remains the same as in other parts of FATA. If the accused denies the murder committed in a broad daylight, the plaintiff produces two witnesses, if not, four members of the accused family including the accused take oaths on Quran that they are innocent. Nevertheless, if a murder occurs in the forest, mountain or at night, oaths of eight persons including the murderer are administered. The number of oaths in doubtful murder case in Orakzai tribe is sixty if it happens at night and ten persons if it occurs in the broad daylight. The Riwaj of Mohmand, Uthman Khel and Tarklanrhi tribes remain almost the same. It must be mentioned that the number of oaths are determined by the Jirga keeping in view the involvement of the accused persons and the evidences available against them. Riwaj doesn't take its course on

inherited land, cold-blood murder and honour killings in Waziri Riwaj, for no tribeman is ready to swear on the Holy Quran for the property he inherited, forgive the blood of his kin or ignore the elopement/rape of his woman.[37]

In *FCR,* no wrong is allowed to be committed by the tribesmen on the '*Tora Lika'*. If it happens, the whole tribe is held responsible under the clauses of collective territorial responsibilities. If the enemy kills his enemy within the right of ways of the *Tora Lika,* the murderer and men of his *khel* are arrested and are dealt with in accordance with *FCR* substantiated by the applications and procedures of *Riwaj*. In Kurram, Mohmand and Bajaur Agencies, the murderer is sentenced to fourteen years rigorous imprisonment by the political agent. The political administration has nothing to do with the continuation or undoing of the enmity between the tribes until and unless it becomes a nuisance for the public.

The concept of *Badal* took an ugly turn when the Taliban began to start a parallel government in the tribal areas. They set out new trends in *Riwaj.* If a tribeman would commit a murder, the Taliban would besiege his house from all sides with or without the consent and intimation of the victim's family and would force the perpetrator to surrender and hand over himself to Taliban. If he would kneel down he would be produced before the *Shura* that would issue a verdict of his execution in front of the tribesmen. Thus, the elders of Jirga were replaced by the Taliban and the Jirga by the Arabic word *Shura* that also means Council in Arabic.[38]

2.9. Revenge of mistaken murders

The settlement of a conflict arisen of a mistaken murder entails justification and logical reasons. The murderer's

family arrives and reaches timely to the graveyard of the murdered along with *Ghud* accompanied by elders and other holy men and seeks forgiveness for the mistake committed. The aggrieved family and khel look into the submission and justification of the murderer's family/khel and pardon the mistake in accordance with *Riwaj*. The Jirga also levies nominal fine on the victim's family as death compensation which is always returned by the aggrieved family in principle as it is assumed something against the tribal norms and tantamount to selling of a dead for money. In Waziri Riwaj, if a mistaken murder happens, half of the blood-money or money spent on the hospitalization of the murdered is paid as compensation along with *Nanawate* of the elders, pirs and fakirs.[39]However, in Riwaj-e-Kurram a mistaken murderer is taken to task. Kurram *Riwaj* enjoins upon the accused to pay blood-money to the aggrieved family; however, if the accused argues that the death was accidental and he didn't intend to kill him, he would take oath on Quran along with other ten men of his family to prove his innocence. Accidental injuries in cross-firing or any other incident is not subject to trial under Kurram *Riwaj.*[40]

In a tribal society, harsh enmity emanates out of the excesses, arrogance and stubborn behaviour of the aggressor or a murder committed in cold blood. However, a child and insane are exception and have got an indemnity in this regard. In Kurram Riwaj, if the murderer is lunatic or less than 12 years old, the blood-money shall be borne by his family. In addition, if he commits any other offence wherein any loss or fine involves, his legal heirs shall bear the loss. If he has no legal heirs the loss shall be adjusted in his legal property. Similarly, in

Apriday Riwaj, there is no *Badal* for mistaken murder except the *Nanawate* of elders seeking forgiveness for the mistake and offering blood compensation as a matter of formality. In fact, this *Riwaj* has universal application in the tribal areas.[41] Let's have a view of a true story of *Riwaj* in a mistaken murder in North Waziristan.

Saleem was the lonely son of his father from a leading family in Land Mohammad khel of North Waziristan. He was crushed to death by a young driver, Kashif of his khel while wheeling on his car in the football ground. Kashif drove away and escaped from the occasion. His family members, taking pirs, fakirs and elders of the tribe, went to the graveyard where Saleem was going to be buried amid great sorrows and grieves. The elders of the *Nanawate* besought the aggrieved family to forgive Kashif for his mistake and implored further that the death of Saleem could not be averted as it was ordained by Allah Almighty. In *Riwaj* the aggrieved party is not supposed to utter words which offend those who have arrived to supplicate in the matter, for they presume it to have been dishonoured which comes in conflict with the elements of *Pashtunwali*. The grandpa of Saleem refused the pray in a dignified manner, saying albeit, he was a grandfather of Saleem, he would not be able to pardon Kashif without the consent of Saleem's father who was abroad and was supposed to come after few months. The refusal was, in fact, based on the cognizance of the offence by Saleem's grandpa that it was not a mistake but a mischievous action on the part of Kashif to be forgiven. The Jirga men conceived the intention of Saleem's grandpa. In such a situation when a timeline is sought it shows the deleterious design on the part of the aggrieved family-a timeline which they need to avail for taking *Badal*.

Nevertheless, the *jirgamar* had their own strategy how to convince and solace the infuriated grandpa whose grandson's blood was shed in high-handedness by Kashif. A Maulana among the *khel* people recited verses from the Holy Quran saying that life and death was in the Hand of God and; that Saleem's death was pre-destined. An elder set on buttering Saleem's grandpa up and importuned that they would wait till the arrival of Saleem's father, provided Kashif' security of life would be guaranteed. Saleem's grandfather hardly agreed and promised that Kashif would not be harmed anyway.

To the good luck of Kashif, Saleem's father came to village after three months along with a dead body of his relative. Kashif's family again went to the graveyard accompanied by the elders and pirs of the *khel* and sat in the grave praying for forgiveness of the mistake committed by Kashif. Saleem's father did not know as to what had happened and why they were sitting in the grave. He explored about and was told that his son, Saleem was crushed to death by Kashif whose family had come to solicit pardon for the heinous crime he had committed. It felt like a rock on his head. The elders of the khel, praising the ancestry of Saleem's grandfather, entreated again for the forgiveness of Kashif but it had no bearings on the grandpa. Eventually a *malik* who was a buddy of Saleem's grandfather dropped Kashif into his feet along with a dagger and said," kill him so that people of the tribe may mention you into their stories being the great valour of the century". The assertion of the malik melted the stone-hearted grandfather like an ice and announced Kashif's pardon.[42]

The incidents of mistaken murders were almost none in the tribal society. Mistaken murders began to happen

mostly in the cross fires of enemies or in road accidents with the advent of automatic weapons and arrival of vehicles in the tribal areas. The tribesmen had no arms and weapons except swords, bayonets and axes which they used for fighting. They were adept at using these weapons and had little chance of committing a mistaken murder. With the advent of Britishers in this part of the world, guns and gunpowder got their way into the tribal society. People started getting *Do-gorha guns* (two barrel guns) and three-not-three guns manufactured in Dara Adam khel, a frontier region near Kohat. These were manually loaded and single shot guns which replaced the culture of fighting with swords and daggers. Even then, murders by mistake were minimum and almost none. Similarly, tribal areas were unaware of vehicles of all kinds till the creation of Pakistan. There were no lorry, trucks and trailers. They used bullock and donkey carts as a mode of transportation. It is an anecdote that a lorry called Mega, used for transportation of the woods, had arrived in the Mada khel village of North Waziristan. The people of the *khel* got around the lorry, brought green fodder and placed before the lorry for eating. They didn't know it was a machine running with fuel. They thought it was an animal and ate fodder.

Though the creation of Pakistan didn't bring about visible changes in the political and administrative horizons of the tribal territories, the bearings of the economic development and the ramifications of the Afghan policy on the tribal areas could not be ignored. The immigration of the Pashtuns to United Arab Emirates and Saudi Arabia played an eminent role in the economic prosperity and development of Pakistan in general and the tribal areas in particular. The abject poverty among the tribesmen diminished; they saw the dawn of a new era of prosperity and happiness. They came across the modern

means of carriage and transportation that immensely accentuated the concept of *Badal* and its handling in accordance with *Riwaj.*

The intervention of the USSR in Afghanistan in 1979 and joining of the Western bloc by Pakistan made the tribal areas the arena of International politics. The Jihadist from all over the world rushed into the tribal areas as they had been invited to a feast, with dollars and arms poured in like a heavy rain. Kalashnikov, an automatic gun of high power got so cheap to be found in the hands of every tribeman. It became so popular that people thought it mandatory to be with Kalashnikov and would take pride to have had it. The fear of death among enemies subsided to an extent of no fear. The enemy would strive to avoid appearance in the public either because of fear of the enemy or remorse felt on the wrong committed. With the advent of the sophisticated weapons, enemies started coming into public places which would result into indiscriminate killings of innocent people in the cross-fire. Neither side would accept the responsibility. The aggrieved family would be unable to recognize the actual murderer to take *Badal* from. They would leave their *Badal* to the dictates of God, for it has no harm to one's honour if the tribeman is unable to take *Badal* from unknown or faceless enemy.

The *Riwaj* of pardoning mistaken murders has got universal application in almost all Pashtun tribes, provided that the murderer accepts his fault and begs pardon for. It doesn't involve any oath taking and blood-money; however, if the aggrieved family takes exception to *Riwaj* and has recourse to coercion; it pressurizes the murder's family to take oath on Quran to ensure that the killer didn't commit the murder to settle any score with.

2.10. Murders committed by unknown

Badal in case of a murder committed by an unidentified or faceless enemy seldom takes ugly turn in the tribal areas. It happens if a tribeman gets deprived of his life by an unknown enemy at immensely dark night or in a broad daylight when he works all alone in a field or mountain. It is reiterated that *Badal* is the most striking feature of the Pashtun tribes. He would restlessly and ceaselessly strive to discern his enemy to take revenge from. He sells his land to have money to keep a thief against the thief to find who the enemy was as it becomes a matter of honour for him to forget the death of his loved one. Sometimes, *Zara/Zeirey* is announced which is given if someone provides authentic information about the murderer. He is ridiculed by the folks of the *khel* if he fails to take revenge. However, there is no harm to one's honour if he cannot find out the enemy to lay hands on. When the tribeman fails to take revenge from his hidden enemy, he arranges a *Khatam-ul-Quran* wherein a malediction in congregation is offered for the destruction of the murderer.

The tribesmen would live in abject poverty a few decades ago. Their livelihood depended upon the dried wood trunks they would bring to market for sale, selling of milks and *Socha*, pure oil. Agriculture land was scarce there and industries weren't established. There were no regular markets for establishing business, but had pubs like shops in the vicinity or the middle of the towns which could only fulfil their needs of life. Very few people in the *khel* had agriculture land where they could grow corn or maize crops. Obviously thefts and kidnapping for ransom were rampant. The killing of a thief at night while committing theft or the killing of the tribeman by the thief was not unusual. Revenge was essential to be taken, had the killer been known, but would remain a saga if the

killer had been at large unidentified. It was, however, not pernicious to one's honour anyway and was not a *paighore* to malign the *tarbore.* In this regard, I remember the story of Rahmani, a known bandit in 80s. He belonged to the Mahsud tribe of South Waziristan. He used to operate in North Waziristan along with local bandits. One dark night in winter, he was committing a theft in village Musaki near Mir Ali bazaar of North Waziristan. To the bad luck of the bandit, the tribeman had awaken at midnight and saw that thieves had entered his house. He cried, 'thieves, thieves, thieves'. His son woke up at once, took up a gun and fired in the air. The thieves jumped out of the house and tried to escape. Folks of the khel got alert while hearing the gunfire. They heard the frightening voices of their tribesmen announcing for killing the thieves. They encircled the thieves from all sides and Rahmani was killed on the spot. It must be mentioned here that killing of a thief has no revenge in *Riwaj* across the tribal belt except the Mahsud and Wazir tribes of South Waziristan. In Apriday Riwaj, there is no revenge for killing of a thief, provided he is killed while burgling into the house.

The killing of a tribeman in the fields or mountains by unknown enemy is almost different in nature. It is a matter of taunt, shame and *Nung*. Its revenge becomes an obligation for the tribesman which is fulfilled at all cost. He has to unearth the unknown enemy by hook or by crook. He feels his honour lost until restored by taking revenge. He becomes a patient of anxiety and depression, since he spends restless days and nights in pursuit of revenge. It is evident from the story of Javed khan of Mir Ali, a truck driver who was chopped and killed by dacoits in *Kashmore*, Sind at night on his way to the Punjab. It was a herculean task for the victim's family to find out the dacoit, the killer of innocent Javed Khan. But

it is true, if there is a will there is a way. The tribesmen detected the killer and killed him in his house in *Kashmore* with the same axe by which Javed khan was killed. The *Nang* of the tribeman was restored by taking revenge this time not within the territorial jurisdiction of the Pashtun tribes but thousands of miles away from his unidentified enemy. Javed khan's family announced the revenge - a call *(Zagh/Ghug*) which is usually made in certain situations to shut up the mouths of the rival's *tarbores* within the tribe.[43]

Generally, the tribeman avoids attributing any wrong act to someone on the basis of doubt until he gets sure about his actual enemy. Nevertheless, it takes ugly turn when he accuses someone for a mischievous action merely upon *Shuk/Shuba*. In such a case, the conflict is referred to Jirga which settles it in consonance with *Riwaj.* In the given circumstances, the elders obtain *Wak* and *Baramta* from both parties to make them abide by the decision of the Jirga. The plaintiff produces solid evidences in support of his claim, if not; the guilty puts his hands on the Holy Quran swearing that he has not committed the wrong act against the plaintiff. In Waziristan, hundred members of the accused family swear on the Holy Quran to prove their innocence. The numbers of oath-takers decrease to seventy in Riwaj-i-Kurram or as decided by the Jirga, provided the plaintiff fails to produce two witnesses. In Apriday *Layar*, eight men take oaths on Quran if the murder happens in the broad daylight and four men if it happens in forest, mountain or at night to prove their innocence in case of failure of the plaintiff to produce two witnesses. In Orakzai tribe, it goes up to seventy chosen tribesmen who take oaths on the Quran in this regard. If the men of the accused family are short

of to fulfil the obligation, each one turns to swear multiple times to complete the ritual. In case of unidentified murder of a woman in Waziristan, fifty individuals of the accused family or as decided by the Jirga take oaths on the Quran to prove that they are innocent.[44]

Making someone sworn on the Holy Quran is as heavy as putting a rock on one's head and moulding enmity with; therefore, tribesmen strive hard to be patient, bear the burden of grieves and wait to strike while the iron is hot to revenge the way he was harmed. Sometimes, the doubt proves wrong and the actual perpetrator gets known to the people, which results into reckless enmity. The plaintiff comprehends his mistake and takes a *Nanawate* of the elders, pirs and fakirs to the house of the aggrieved to seek pardon. Pashtuns in general and the tribesmen in particular are very tender-hearted. They can easily be convinced and persuaded to come to term and avoid animosity, if they think, they don't leave *paighore* to his posterity and their honour is saved. They need to prove their innocence and baseless humiliation. If one seeks forgiveness and accepts his mistake, he is forgiven provided the seeker follows the Riwaj mechanism of dispute.

The killing enigma of unidentified enemy further worsened when the unknown enemy turned into faceless enemy after the advent of Taliban in FATA. Killing of the tribesmen by masked armed men and lying of their dead bodies on the roadside became an order of the day. The tribesmen didn't know who that ferocious enemy was? Why was he killing the tribesmen and their elders? Were they really Taliban or someone else were operating in the garb of Taliban? The faceless enemy made a new history of the Pashtuns with regard to the ruthless cutting of

throats and limbs. The tribesmen got so helpless and passive to speak ill of it, let alone taking arms against the faceless enemy. One does not know what happened to the *Nung*, *Sharam* and *paighore* of the tribesmen? Where are the eagles, panthers and wolves of the tribes when they are badly needed? Why did the so-called monarch-the political agent and the extensively trained armed forces of Pakistan failed to remove the mask of the enemy thereof. Perhaps they perceived that the faceless enemy was like a sacred cow which was not supposed to be sacrificed for the sake of honour of the tribesmen. I think the tribesmen had been so terrorized that they couldn't raise voice against the faceless enemy, even though they knew who they were and why were they killing them.[45]

2.11. Murder of tribesmen during tribal war

Tribal war has been the salient feature of the tribal society. Tribal war occurs when a dispute arises on land, mountain and water between two tribes/khels. *Riwaj* enjoins upon the warring tribes to settle the dispute amicably through *Sulah* in the first instance and through *Riwaj* or *Sharia* if *Sulah* fails to resolve the dispute. Sometimes all efforts prove futile and lead to a tribal war for which they raise *Lashkar* of the tribesmen. It is here that *Nikat system* starts functioning. Each family provides fighting men for the *Lashkar* on the basis of its share in *Nikat* who are committed to protect the honour of their *khel* and families in the comity of tribes. The sturdy, enthusiastic and ardent youths of the tribes take up weapons and march towards the bunkers and mountains tops to fight against the enemy. It is here that *tarbores* come out openly to show their mettle in the battlefield and set feathers in their families' caps. The youths of the tribe

fantasize that if they fight well and show their valour and come back as conquerors or get martyred for their tribes they would be named as heroes and their names would be sung in folklore of the tribes.

No doubt, the tribesmen are not formally trained in warfare strategies, but the way they plan, strategize and fight signifies that they are born soldiers. They have proven their fighting skills in all ages against their enemies which have made them invincible. We have seen how the tribesmen go to attack the enemy in his own den at night taking back the outposts occupied by the enemy and provide logistics in the rugged hills or green plains. We have also seen and heard the provocative and reactive gestures and voices made by the tribesmen at night against one another. While taking the bunkers/outposts back need to mount onto the enemy's dens, the tribesmen most likely come across the enemy's bullets, but they forget they will die and march ahead. In such a situation, a tribeman can meet his fatal death without knowing his killer. It is worthy to mention that though the murderer may be known to both the tribes and families, yet he is not identified and claimed against, for it becomes a taunt for the whole tribe if he roams around and cannot be killed due to the *Riwaj* of *Badal*. However, the murdered family/tribe can kill anyone in the enemy's tribe to take revenge of their murder. Sometime the dispute is resolved through *Sulah*, in which blood-money is paid for the murders committed in the tribal war. The blood-money is shared by the families and *khels* of the entire tribe irrespective of the fact whether they were accomplice in the murder or not.

This *Riwaj* of the tribal war has universal application in the whole tribal belt. It is based on the concept of collective responsibility wherein an offence committed by one individual of the locality or tribe may be construed as

an offence perpetrated by the whole tribe, for it was an action undertaken in pursuance of the collective benefit of the tribe. This *Riwaj* of collective responsibility was perhaps conceptualized by the Britishers and was made a cornerstone for the sections of collective territorial responsibilities under the Frontier Crimes Regulations, which is now considered as the worst piece of law and contrary to fundamental human rights.[46]

Tribal Lashkar in Waziristan

2.12. Killing of or by a woman

Woman, being a fair sex and an honour of the family, has no chance of committing a murder in the tribal areas. Seldom has it happened that a woman commits a murder out of sheer frustration and becomes a nuisance for the menfolk of the family. Most of murder cases committed by women have occurred in order to escape humiliation. In the instant cases, *Riwaj* has taken different course in different tribes. In Riwaj-e-Kurram, if a woman kills someone for any reason, either she is killed or revenge is taken from her family members. In *Apriday Narkh*, if a woman kills someone in cold-blood, her family is

supposed to kill her, if not, it results into enmity between the two families. The Waziri Riwaj also provides for killing of the male member of her family in lieu thereof.

Riwaj denounces the killing of a woman in tribal or familial enmity. Riwaj considers the killing of a woman against the *ghirat* of a true Pashtun. However, if it happens her revenge is taken in all tribes. In *Apriday Layar*, a man can be killed in return to take revenge for the killing of a woman, besides taking *Nanawate* to the paternal family of the murdered woman, if married. The Waziri Riwaj is almost different. Here a woman is equated with half of a man. Either her blood money is accepted or her revenge is taken by killing a male member of the enemy's family provided that half of his *Neka/Saaz* will be paid to his family in return for his killing thereafter. In case of doubtful killing of a woman, the plaintiff produces two witnesses, if not, the defendant takes oaths of fifty men on the Holy Quran to prove his innocence. In the old Riwaj of Waziristan, there was no revenge for the murder of an innocent woman; instead the leg or nose of the murderer would be cut off as a woman was said to have been equal half of the man in social status. If the murderer would approach the aggrieved family for reconciliation and the latter would agree for, the murderer would pay half of the blood-money in lieu of escaping revenge. However, this *Riwaj* has been done away with in today's tribal areas.

If a pregnant woman gets killed at the hands of enemies, her revenge leads to killing of two people in *Kurram Riwaj*- one for the killing of a woman and one for the child in her womb. In Waziristan and Khyber Agency, two men can be killed for - one in *Badal* for the woman and one for the child in her womb. It has similar application in other

tribes as well. Nevertheless, it has many variations and is usually decided in accordance with the situation confronted by the tribesmen.[47]

2.13. Meeratha / Khayee in Riwaj

The Pashtun tribesmen damn care about the consequences of enmity and brutally kill all male members of the enemy's family in cold blood till they are completely annihilated. They don't want to see them raise their heads and take revenge from. The *tarbore* (plural) always seek opportunity of maligning and devastating their *tarbore* until they surrender or get annihilated. Hence, if all male members of a family are brutally removed from earth' surface, it is called *Meerath/Khayee* in *Riwaj*. It is evident from a Pashto proverb which says, "***Mar wajalai kha de tarbore wahalai kha de***", means it is better to kill a snake and humble a *tarbore*.

Meeratha also happens if the stone-hearted uncles / cousins murder all the male members of a family in order to occupy their land and property. Usually it occurs if the cousins find someone single in the family to be wiped out and grab his property. Even small cute babies are not spared, for they fear they would grow and would take revenge from. They are inhumanely murdered in front of their mothers. Women are taken into custody and married to the men of the enemy's family.[48]

Sometimes, witty and brave women escape along with their cute male babies and take refuge in the house of a strong man of the khel/tribe and live under his protection. It is there that the lonely survived baby of the holocaust grows into a sturdy young man and determines to take revenge of his family. His widowed mother ingrains in him the wrath of his family's revenge. Eventually he takes up

a gun to obliterate his enemy who had ruined his family. He usually succeeds against his enemy because of the sympathies of the local folks. His enemy also strives to kill the lonely male of the *Meeratha*'s family, but he gets survived being in protection of his asylum-giver who is bound under Riwaj to protect him against all odds at all costs. However, *Riwaj* doesn't allow the protector to take weapon with the asylum-seeker to take his revenge. If he does so, he undertakes an action which comes under the ambit of an offence in *Riwaj* and is revengeable.

Meeratha is, in fact, an inhumane act of violence which is seriously viewed by the Pashtun tribesmen. In *Meeratha* case, the people of the *khel* hold a *maraka* and take a stern action against the perpetrators by proscribing them from the *khel* and set their houses ablaze which is called *Kushanda* in Khyber, Mohmand and Bajaur Agencies. The practice of *Kushanda* is also resorted to in the cases of elopement or any other brutal act committed by the tribeman against the fellow tribesmen especially women and children.

2.14. Kidnapping of a man in Riwaj

The tribesmen of the borderland were quite dependent for their livelihood on kidnapping for ransom. They would come out of their dens and would pick up the rich Hindus and others from the settled areas bordering their country. Such cases would be dealt with by the tribes as well as by the political agents in accordance with the collective responsibility of the tribes. If the kidnapped person would hail from a sister tribe, the tribe of the kidnapped would arrest and detain the men of the kidnapper's tribe to release their man which was called *Baramta* in *Apriday Layar* and *Riwaj* of the Peshawar tribes. Waziri Riwaj calls them *yarghamal*. The elders of the latter tribe would then come along with sheep/goats seeking pardon for the act of the kidnappers and would bring the kidnapped man

with honour and dignity. If the case would be reported to political administration, the political officer would take action under the section of collective responsibility of the FCR against the kidnapper's tribe to release the kidnapped and hand over the kidnappers to the local administration. If the elders would fail, in the first instance, to carry out the orders of the political officer the political agent would discontinue the allowances and other incentives of the tribe followed by indiscriminate arrest of the tribesmen. Ultimately, the political agent would hold a Jirga of the elders and would warn to take action against the kidnappers; otherwise, the government would take action itself. The warning would bear the fruit and the kidnappers would surrender to the political administration.

The kidnapping of a man within the same tribe/khel would be dealt with differently. If the accused would be proved guilty, they would release the kidnapped man immediately and would take *Nanawate* to the house of the kidnapped man's family to seek pardon for the commission of the act. If the accused would deny the kidnapping and the matter would be referred to Jirga for resolution, the plaintiff would produce two witnesses in support of his allegation, if not, the accused would take oath along with ten men of his family under Kurram Riwaj.

Kidnapping for ransom was ceased to happen due to the administrative measures of the government as well as betterment of the financial conditions of the tribesmen. The political agents connected the far flung areas of their respective agencies through road network to make them accessible so that action could be taken against the kidnappers and dacoits. Besides, the elders of the remote localities were awarded government institutions wherein posts of ministerial staff were filled in by the relatives of the owners in lieu of land compensation. They started

depending for their livelihood on the payments made to them on accounts of class-IV services they would render. If any mishap of kidnapping would happen, the political officer would stop their payments and would order to recover the kidnapped man and hand over the culprits. In addition, the raising of living standard and the inter-tribal matrimonial relations greatly improved the law and order situation in the tribal areas.

With the advent of the 21th century, the conditions of FATA deteriorated again due to the rise of Taliban and military operations against them. Kidnapping for ransom, abduction for torture and killing thereafter became the favourite business of the Taliban. This time, both *Riwaj* and *FCR* failed to take action against the perpetrators. The tribesmen didn't see anything viable to control the barbarity of the Taliban. They destroyed the sanctity of *Riwaj* and obliterated the concept of *FCR*, for they used to run parallel government in FATA - a self-centred rule full of oppression and repression.[49]

2.15. Theft in Riwaj

The tribesmen of the borderland went through an unimaginable human adversity and faced abject poverty. They were impoverished enough to get anything to eat and sleep with. They would contend themselves in supper with the locally produced oil (*Ghee*) derived from the milk of cows and buffalos. Their lunch was with a drink made up of butter *(Lasi/shnubay*). They would get little to wear new clothes; therefore, they would look clumsy and in shabby conditions. They would take a bath with the white mud as they had no soaps and shampoos. They were ignorant of the luxuries of life. They didn't have government jobs as there was no central authority. There was no industrialization; therefore, they believed in

agrarian economy. Land was scarce; therefore, those who had no land would become tenants. How much they could live up with those meagre resources is a hundred million question. Hence, they would depend on theft and kidnapping for their livelihood which was, on the contrary, a source of nuisance for the people as well as the government of the day. It was a vibrant society as well; therefore, the elders had devised a system in the name of Riwaj under which they would lead their lives despite so many hardships they were facing in life.

Waziri Riwaj in this regard was quite amazing. If an incident of theft would happen and the thief would be identified, the theft goods would be returned first, if not, double price of the goods would be paid in lieu of the stolen goods along with *Nanawate* of the elders and a pledge of giving his next would-be born daughter to the aggrieved tribeman. If he would give birth to a daughter and would die at the time of birth or thereafter, the right of the plaintiff would also die with. If the matter wouldn't settle till the death of the accused, his son would follow the same *Riwaj* or would pay its price for. If the accused would refuse to give her daughter, he would be liable to pay forty five rupees to absolve himself from the offence in lieu thereof. If the plaintiff would refuse to take money in lieu of his daughter, he would receive only twenty-two and half rupees as per *Riwaj.* If the theft would be committed by a group of thieves, double price of the theft goods would be returned once along with *Nanawate* of elders; however, each thief was required to give birth to a daughter who would be given as compensation to the aggrieved tribeman for contempt of his honour or would pay its price as mentioned above. Nonetheless, if the thief would deny the allegation, the plaintiff would produce witnesses, if not; the accused would take oath on the Holy Quran. If the plaintiff would claim that his

goods were stolen in the broad daylight and he had identified the accused, the plaintiff would take oath on the Quran in this regard. Sometimes, the issue would remain unsettled. Either the thieves would refuse to resort to Riwaj or the victims of theft would become adamant to take revenge for. In such a situation the victims, while getting the opportunity, would attack the animal herds of the accused or commit theft from his rival and would settle score with. Thereafter, the matter would be resolved through *Sulah* or it would result into unending enmity. This *Riwaj* was in vogue to get secured against the thieves within the *khel* or nearby *khel.* It didn't deal with the theft committed by the bandits of other tribes who would cross the geographical limits of their tribes; would attack the *khel* and villages of the sister tribes; and would take away animals, burn crops or cut off trees of the sister tribe. In Waziristan, this group of bandits was known as *Ghadai*. In this type of marauding, the people of the *khel* would gather to arrest the people or retain the animals of the bandits' tribe so that the theft goods might be recovered. The elders of the bandit tribe would then come along with the theft goods and sheep in the form of *Nanawate* and would seek forgiveness for the offense committed by the bandits.[50] In Kurram Riwaj, if a theft or dacoity happens and the thieves or robbers are identified, the stolen goods are returned or its cost is paid along with *Nanawate* of sheep/goat and *Nagha* as decided by the elders of council. If the accused denies the allegation he takes oath on the Quran as decided by the Jirga keeping in view the cost of goods. If the theft results in the killing or injury of a man or woman he would be punished as he had intentionally injured or killed the inmates.[51]In *Apriday*

Riwaj, stolen goods are returned along with *Nanawate* of elders and a fine imposed thereon. However, if the accused denies the allegation he takes oath along with one, two or four *Sa'adan* (witness verifying the evidence) as decided by the *Jirgamar* according to the value of the stolen goods. Sometimes, a theft is committed and the stolen goods are kept elsewhere. In such a case, if the stolen articles are recovered/found with a tribeman, either he is held responsible for the theft or he absolves himself by disclosing the names of the thieves or the person who had sold him the stolen goods. The *Riwaj* of theft seems to have equal application across the tribal belt.[52]

Robbery seldom takes place in the tribal areas, for tourists are not allowed to visit tribal areas while locals have no fear of being robbed due to the concept of collective responsibility of tribes. Whosoever is robbed in the territorial jurisdiction of the tribe, the entire tribe is held responsible by the political administration as well as by the tribe of the robbed people. Anyhow, if a robbery occurs and the robbers are identified they become liable to return the robbed items and pay the *Layare Sharam* (fine on the defamation of the passer on the path) along with *Nanawate* of elders and sheep/goats etc. If the robbers are not identified the political administration levies fine on the tribe under the clause of territorial responsibility and handing over of the robbers.

This signifies how the system of collective responsibility was deeply ingrained in the minds of the tribal people. It was because of the success of this system in the maintenance of law and order that the Britishers also adopted and incorporated it in the new regulations that haunt the lives of the tribesmen even in the 21th century.

It must be mentioned that the cruel system of giving the would-be born female baby in return to theft has no sign of existence in today's tribal areas. *Riwaj* commands the tribesmen to return the theft goods along with *Nanawate* flanked by sheep/goats to seek forgiveness for the act which is considered as the worst of its sorts and below the dignity of the tribesmen. This *Riwaj* prevails within the tribal belt and is restricted thereto. It has no application on the outsiders, which is evident from the kidnapping for ransom and abducting and theft of vehicles from the settled areas.[53]

2.16. Damaging trees, crops and habitats in Riwaj

Trees have a significant place in the tribal life. Trees are a source of livelihood for the tribesmen upon which they earn bread for their children. In fact, God has endowed the tribal areas with numerous dense forests and green mountains. These wild trees provide logs and woods, which are being used as fuels in kitchens, furniture making and carpentry in buildings. The tribesmen believe that the green trees are non-living inmates of God and prostrate Him in a manner as human beings bow down before Him. Their cutting or chopping off is generally avoided and offended by the owners. They cut trees only if they become dry or its trunks grow much bigger to fall on ground and cause nuisance for the fellow tribesmen.

Like land and mountain, tribesmen quarrel on trees also which sometimes takes ugly turn and results into killings. If a dispute occurs on a land or mountain, the trees thereon bring about a conflict automatically till the land/mountain dispute is decided between the disputants. If any claimant of the land/mountain cuts a tree at that point in time, it results in fighting and aggression. Therefore, *Riwaj* bans cutting of trees on disputed land till

its settlement. Besides, tribesmen are more supportive and God-fearing when it comes to charity or help to their needy and poor neighbours. They don't mind if someone asks to cut a tree to have wood for burning, but cutting without prior permission or stealing may lead to a bloodshed and enmity. In addition, a proxy war has been noticed in the tribal life. If a conflict arises between two individuals, the third among the *tarbore* covertly damages the crops, burns the hay or any old muddy habitat to irritate and provoke his inner's man against his disputant *tarbore* which, most of the time, turns into enmity. That is why it is an old maxim of a tribal elder that it is prudent to avert keeping a dog and a garden, for they can cause a conflict anytime.

It is evident from the conflict arose between two *khels* in North Waziristan over the ownership of trees grown on the top of the nearby hill. The matter was referred to a Jirga wherein it was decided that the dispute would be settled in accordance with the local *Riwaj.* Both the disputants were asked to submit their claims. Submission of a claim in a dispute is a technical job based on the wisdom and logic of the claimant; therefore, each claimant takes due care in this regard. Sometimes, tribesmen hire *Vakil* (lawyers) among the tribal elders who are well conversant in the local *Riwaj*. In the instant case, one of the tribesmen claimed that he was already sleeping under the shade of the trees and if someone could drag him away therefrom, he was allowed to do so; while the other claimant stated that he had already climbed on the tree and was getting fruit out of it; if someone could get him off therefrom, so do it. Both the claims were full of logic and reasons. Both the parties desired to own the oath on the Holy Quran to swear and win the case; therefore, they devised claims which could prove them occupants. It was an acid test for the Jirga to

adjudicate on. The *Jirgamar* examined all evidences of the claimants. In addition, they also inquired about the dispute from the folk to retrieve reasonable information for accurate judgment. One can see logic in the decision of the Jirga in the instant case. The Jirga decided that the sleeping claimant was just sleeping under the shadow of the trees to have a rest and a sleeping man was like a dead while the other claimant had already climbed on the tree getting fruit out of it being owner; therefore, the latter would put his hand on the Holy Quran that the trees were left to him as inheritance by his ancestors. The tribeman swore on the Quran as required and won the case.[54]

In cases of cutting trees, damaging crops or burning tents and houses, the *Waziri Riwaj* was quite clear. In 19th century, cost of the fruit-bearing tree was Rs.100. Burning of home, tents, etc. would cost Rs.100 in addition to the cost of goods burnt or damaged. If the incident would cause killings of inmates inside, it would be construed as murders in cold blood and would be avenged. In case, the accused would deny to have committed the offence he would absolve himself by taking oath on the Holy Quran. Currently, there is no specific rate of damages of trees, crops, tents and houses etc; therefore, it depends upon the loss incurred.[55]

In fact, cutting of green trees are prohibited in all laws and religions. When the Britishers came and got control of tribal territories, they upheld the local customs and traditions in order to pacify the tribesmen and thereby banned the cutting of green trees. The ban on cutting trees was so adamant that a person could get himself absolved of a murder case on the ground that the murdered had cut green trees of the murderer in violation

of the tribal *Riwaj.* It is said that a tribal *malik* in Darpa khel village of Dawar's tribe killed a person without any obvious reasons. He was fetching logs and trunks of wood wrapped up with a rope coming from field side. He didn't know his gory end. He was shot dead on his way home on the ground that he had cut the trees of the murderer. The political administration arrested the murderer and held a *Jirga* which decided that a murder could be committed by insulting a woman or cutting of tree in *Riwaj;* therefore, the murderer might be released. The decision of the *Jirga* was accepted and implemented accordingly by the political administration.[56] No doubt, cutting of green trees is fundamentally wrong and Riwaj has also developed inhibitions in this regard, but killing of a tribeman on the pretext that he had cut a green tree seems to be quite illogical; therefore, one can disagree with the source/authority. The *malik* might have either manoeuvred or influenced the *jirgamar* to decide in his favour as we have neither seen nor heard any precedence of this sort in *Riwaj* where a murder of the tribeman has been attributed to the cutting of green trees. In fact, *Riwaj* says if a tribeman is accused of cutting green trees or standing crops on the basis of doubt he has to put his hands on the Holy Quran to prove his innocence and swears that he has neither committed the offence nor accomplice to it nor informed of it.

In *Turizona*, the offence of damaging trees, crops, houses and tents have been specifically dealt with and slabs of losses have been mentioned. It says that the accused must return the loss of the goods in addition to any other penalty imposed by the court of the political agent. However, if the accused denies the offence, the plaintiff shall take oath on the Holy Quran that he has not

committed the offence. The number of oaths depends upon the loss incurred.[57]

The *Riwaj* of cutting green trees, damaging crops, tents and houses, etc has almost universal application in all tribes. If the damage is caused in broad daylight, it is avenged for which usually leads to ceaseless enmity. If it happens at night or in a cagey manner to allege someone for, it is resolved through customary oath made by the accused in front of the entire *khel*. Sometimes, a mischief in the family commits such offence against his *tarbore* without the knowledge of the elders of his family. In such a case, the family of the accused takes a *Nanawate*, accompanied by pirs, fakirs and elders of the *khel* along with sturdy sheep, to the house of the victim's family and begs pardon for the act committed. They assure the *jirgamen* that they don't know whatever has happened and return the loss by seeking forgiveness for.

2.17. Dispute on land

Land has the status of a *namoos* in the Pashtun *Riwaj.* Grabbing of land by a *tarbore* or any other individual of the khel/tribe doesn't only mean loss of a land but a harm done to the honour of the tribeman. It becomes a *paighore* in the comity of *khels* and tribes which is remembered for generations. This toughness in tribal behaviour on land dispute seems to be the scarcity of land and their dependence for livelihood on land produce. The tribal belt, as has mentioned earlier, consists of mountains and steep valleys and has a minor chunk of cultivable land. A tribeman who had cultivable land in the past would be called as the *Khan* of the khel/tribe. The impoverished in the *khel* would seek *Khairat* from the '*khan'* in the form of wheat, maize or rice to cater for the bread and butter of his family. He would declare land as

evacuee for *Kabaristan* of the khel where people of the *khel* would bury their dead free of cost. In fact, land has no less significance than the honour of a woman among the Pashtun tribesmen.

Most of the lands in the tribal territories are *Shamilat*, however, it varies from agency to agency. Some tribal Agencies have land settlement while others have not. Some parts of the same agency may have land revenue record while others may not. For instance, in North Waziristan the lands of Dawar's tribe have land revenue system but the land of the Wazir tribe is based on *Shamilat*; therefore, we have more land disputes in Wazir's tribe than Dawar's tribe.

Land disputes mainly occur on account of *Lashtay/Lakhtay* (water course), *Salmaa* (water-exit), *Breed/Brit/Pola* (demarcation line) and *Shuffa* etc. Besides, the tribesmen live in extended family based on immediate kinship; therefore, the division of property keeps pending until the relationship of kinship turns into *tarborewali* - a relation wherein blood becomes thinner than water. It is here that kinship ends and enmity begins. Having a common ancestry, the tribesmen have common property without revenue record which becomes a bone of contention among them. The only document which preserves the land record in tribal areas is the old-dusted hand written booklet called *Waya* in Waziristan that is kept by all families and *khels* in safe custody. This document encompasses not only revenue record but also provides for transmitting the genealogy/pedigree (Nikat) of each family on the basis of which property is divided among the clans, sub-clans and inferiority and superiority of the tribesmen are recognized. It must be mentioned that a claim against land can be made within one *Pahrhai*(one Pahrhai is equal to hundred years or the completion of the generation) which literally means one

generation provided the plaintiff provides ownership evidence. However, if the land remains disputed for long time, the plaintiff can lay claim on it without restriction of time.

Inherited land or any other immovable property has a bizarre division in *Riwaj* based upon injustice made to the women folks of the family/khel. Women are their honour indeed but this honour has been deprived of the right of share in the inherited property. Very few people, having religious tendency and spirit of justice, share their land and property to their sisters and daughters. Nevertheless, property amongst menfolk is distributed in accordance with *Islamic Sharia*, i.e. equal share to all brothers until their father has left a will in someone's favour. If anyone among the brothers dies during the life time of his father, the sons of the deceased have no right in the property of their grandfather until announced by the grandfather himself. *Riwaj* makes the living brother as the owner of the property until his death and allows the property to be distributed among the cousins thereafter. It is rampant in the tribal areas that one member of the family earns and the rest just eat and drink. When the bread-earner ceases to earn or keeps his hands off to extend any help to other family members, he becomes an enemy of all and faces the music. All these factors lead to land and property disputes among the tribesmen.[58]

Kurram Riwaj follows Islamic Jurisprudence of inheritance for male members of the family; however, the division of inherited assets among women, female child, and Hindus community are made in accordance with the prevailing *Riwaj*. A male baby in the womb of her mother has the right to inheritance if he borns within nine months and remains alive provided he is not the offshoot of illicit

relations. Kurram *Riwaj* also prohibits the share of the murderer in the property of the murdered (*Meeratha'*s property), if the murderer intends to annihilate all his relatives and grab his property. *Riwaj* commands that his property shall be declared in the name of a mosque, Gurdwara (place of adoration for Shias) or DharamSala (place of adoration for Hindus) provided he has left no will in favour of her widow or sister. Woman has no right in patrimony unless her father/brothers/husband bequeath in her favour with written evidence. Nevertheless, if the heirs (widow/sister/daughter) don't want to live with her in-laws and prefer to lead independent lives, her in-laws, being legal heirs of her husband/father/brother property, would not compel her to remarry and would provide annual subsistence in accordance with her justified needs.[59]

A question arises why women are deprived of the rights of share in their inherited property? The answer is quite amazing. In the tribal society the ownership of land lies with the tribe/khel indeed. If a woman gets married to another *khel* or tribe and her parents intend to give her share in the property, they wouldn't be able to apportion her share as her cousins and people of the khel/tribe would never allow them, for they think it would bring in a non-member who would be a source of nuisance in the socio-economic affairs of the tribe/khel in the future.[60]

Riwaj provides solutions to all disputes arising out of the land and property division in the tribal society. The dispute can be resolved either through *Sulah/Riwaj* or *Sharia*. As I said above, land is equally distributed among the successors or as bequeathed by the parents, but if a conflict occurs it is referred to a *Jirga* that conducts'

Sulah'- a process in which *Baramta* is obtained from both the parties to make them bound to yield to the judgment of the *Jirga*. In case, any party disagrees with the decision of the *Jirga*, the *Baramta* is forfeited and the matter may be referred to another *Jirga*. The process of *Sulah* is based on the collective wisdom of the *Jirga* members and the logical claims of the claimants. People hire well conversant *Vakils* among the elders who are known for *Sulah* and *Jirga*. The elders of the council take their claims, add both the quantities and divide the quantities by two, among other things, which is called Arithmetic Mean in statistics. One can see the mind application of the illiterate people who never knew what statistics was but they used it since time immemorial in Riwaj which is mind-blowing. Sometimes, the disputants fail to settle the dispute amicably and refer the dispute to a *jirga* for *Riwaj. Riwaj* is different from *Sulah* in the sense that in the former one party presents witness and the other party takes oath on the Holy Quran swearing that his claim is genuine which is called *Riwaji Le/Lo*. It is pertinent to mention that each party strives to win oath on the Holy Quran, for it means winning of the case. In cases of inherited property, the *jirgamar* investigate the matter in the light of the written evidences, if any, in addition to the information they retrieve from the *Koranai/Khandaan* of the plaintiff/defendants. In purchased property, the written evidences and witnesses are examined and the dispute is decided accordingly.

In *Riwaj-e-Kurram*, if the plaintiff accuses the defendant to have occupied his land while the defendant pleads that he has purchased the land, the matter is investigated by the *jirgamar* in the light of available evidences. If the evidence of the defendant is plausible the claim of the plaintiff is dismissed, if not, the defendant proves the purchase and occupation of the land by taking oath along

with another close relative. If the defendant fails to produce evidence or refuses to take oath on Quran, the plaintiff comes to put hands on Quran along with two other men to prove that he has not sold the land, provided the defendant is his *tarbore*.

If a tribeman holds a land, which is entered in the revenue record for more than twenty years and his *tarbore* claims its ownership, his claim is dismissed. However, if any doubt exists the plaintiff can produce two witnesses in support of his claim, provided the land is more than 2.5 acre. In Waziri and Apriday Riwaj, the plaintiff can lay claim on the land anytime if he can produce evidence and/or the land has remained disputed for ever between the two parties.

Dispute on land also emerges between *khels* and tribes in the tribal areas. In the instant case, the *jirgamar* examine the land record and written evidences, if any and decide the case accordingly. If the defendants deny the claim, the plaintiffs produce witnesses, if not; the defendants take oaths on Quran. The number of oath takers in *Apriday Nurkh* depends upon the number of claimants (*Kandi*) in the dispute. One member of each *Kandi* puts hands on the Holy Quran in support of his claim. In *Waziri Riwaj*, a member of each clamant family requires to take oath on Quran to own the land. In *Kurram Riwaj*, *Oyagona* is administered in land dispute of this nature.

A property, both moveable and immoveable is distributed in accordance with the *Narkh* of the tribe. If a tribeman sells the shares of other shareholders without their consent or the shareholders being minors don't know the sale of their shares, the transaction is undone and their shares are given back as required under the *Riwaj*; however, if the seller holds written evidence of their consent or the evidence is somewhat doubtful, he

produces evidence along with two witnesses who take oaths to have witnessed the consent of the shareholders for the given transaction. If the plaintiff fails to produce such witnesses, albeit, they are alive and can be produced; the written evidence shall be meaningless and shall have no effect.

In addition to the disputes on inherited property, disputes on *Shamilat* land need special attention. *Shamilat* land has no revenue record and specific ownership. The *Riwaj* on *Shamilat* land seems to be universal throughout the tribal belt; however, *Riwaj*-e-Kurram has specific provision in this regard. For instance, if a piece of land, surrounded by occupants from four different sides, causes a dispute there among, only the occupants to the eastward and westward have the right to occupy the land. The logic behind this Riwaj might be the flow of water from westward to eastward. If the land falls in the settlement areas and has a water course or a pavement running from North to South, even then, the piece of land to the east will be given to the owner of the eastward and that of west to the owner of the westward subject to its verification in the revenue record. Construction on *Shamilat* land is not permissible until decided by a jirga in favour of a claimant. Besides, trees grown on *Shamilat* land cannot be cut till resolution of the dispute.

Riwaj also permits *Shuffa*. While selling immoveable property the tribeman requires informing all his close kindred if they want to purchase the property or he'll sell it otherwise. If they don't express their willingness, he has the right under *Riwaj* to sell it to anyone within the *khel*, sometimes even within the tribe. However, if he fails to follow the *Riwaj*, he faces the music of *Shuffa*. The *tarbore* intimates him as well as the potential buyer to stop the sale and purchase of the property respectively, for he is willing to purchase it. In *Riwaj-e-Kurram*, the

seller issues notice through the court of the political agent to the potential *Shafi*. If the *Shafi* appears in the court and seeks some respite to decide or arrange the sale price, the court grants him a timeline of six months. Besides, the claimant can announce *Shuffa* within a period of one year of the date of sale or the date of transfer. However, *Shuffa* cannot be claimed against immoveable property acquired through purchase or award. In *Apriday Layar*, *Shuffa* can be claimed within a period of six months of the transaction occurred on a property within the tribe/khel. If the purchaser belongs to another tribe, *Narkh* allows *Shuffa* to be claimed within a period of one year of the transaction.[61]

In case of pawn (pledged) land, if the Pawnee denies the ownership of land of the Pawner, the latter produces ownership deed of the land or any witnesses to prove that the land belongs to the Pawner and vice versa. If both the Pawnee and the Pawner fail to produce any evidence in support of their claims, the Pawnee takes oath on the Quran that he has inherited the land and has never been bequeathed by his forefather about the pawn land being disputed. If a dispute arises over the pledged amount, the Pawner puts the money in the Holy Quran and asks the Pawnee to receive the amount on oath stating that it was not less than what was placed in the Quran. This shows that the plaintiff (Pawner) produces witnesses or written evidences first and the defendant (Pawnee) takes oath on the Quran if the former fails to produce witnesses. If the land doesn't fall in the occupation of any party, both the parties are required to produce evidences in favour of their claims, If not, both will take oaths on Quran and the land will be divided equally between the two parties.[62]

Sometimes, the elder of the *khel* allows *Hamsaya* to live in his house for free. After a lapse of considerable time, the *Hamsaya* claims the ownership of the house when the elder asks him to vacate the house. So, the matter is referred to a *jirga* for Riwaj. If the *Hamsaya* produces written evidence of ownership before the elders of the council, the claim of the elder is dismissed, if not, the *jirga* decides in favour of the real owner and the *Hamsaya* is immediately expelled from the house. In case, the *Hamsaya* was allowed to construct the house and live therein until he leaves the house himself, only cost of the *Theer* (roof) is paid to the *Hamsaya*.

The tribesmen also quarrel over public muddy path (*Layar*) and *Vialla/Vella* (water channel/canal). If a dispute occurs on *Layar* having no mention in the revenue record, the men of *jirga* meet the elders of the *khel* and retrieve information from the local folk about the factual position of the dispute. If they get satisfied with the evidence collected, they decide against the defendant and ask him to restore the public path in original. If any doubt exists in the evidence, the plaintiff produces two witnesses in support of his claim, if not; the defendant takes oath to prove his plead. The Riwaj on water dispute follows the same procedure. In fact, the *Riwaj* on land and other immovable property seems to have universal application across the tribal belt and have almost nominal variation.[63]

The tribesmen also resolve land and property disputes through *Islamic Sharia*–a process in which the council of elders appoint *Qazi/Muhakam*, means judges who are well conversant in Islamic jurisprudence. Here one can see the key role of the elders and *Jirga* in the dispute resolution. It's the elders of *jirga* who choose the

Muhakam, provide logistics and bring them to the chosen venue. They discuss the dispute with the *Muhakam* and its implications for the disputants. They strive to make the disputants agree for *Sulah* and literally fall in the feet of the *Muhakam* asking him to make utmost efforts to avert oaths on the Holy Quran. The *Muhakam* obtain claims from the disputants to examine and determine the plaintiff and the defendant. They determine the status of the plaintiff who produces evidences and the defendant who takes oath on the Holy Quran in the light of the Islamic jurisprudence. The *Muhakam* strive hard, in the first instance, to settle the dispute through *Sulah*, for it is the Hadith of the Holy Prophet (PBUH) that it is better to resort to the prevailing customs and usages for dispute resolution in the first instance. Thus, in *Sharia* the decision making of the elders shifts to the *Muhakam* who announce their Hokum, verdict as envisaged in the Quran and Sunna.[64]

It must be mentioned here that Kurram *Riwaj* officially endorses dispute resolution through *Islamic Sharia* since 1941, provided both the parties hail from the same sect. The defendant will have no objection thereof. However, if the disputants come from different sects, the dispute would be resolved through the council of elders in accordance with the local *Riwaj.*

The resolution of conflicts through *Riwaj* and *Sharia* is a commonplace phenomenon in the tribal areas. They are cheap and speedy ways of justice indeed. Nonetheless, these two methods of dispute resolution have tremendous challenges to operate. The *Muhakam* and the *jirgamar* are said to have turned corrupts. They talk for money and walk for money only. The sense of belonging among the elders of the tribes and the religious

obligations the *Ulemas* have had on their shoulders are said to have lost in the tribal society. Notwithstanding all flaws and deficiencies existing in *Riwaj* and the Islamic scholars, the tribal areas were the abode of peace and tranquillity. The compensation received by the *jirgamar* and the Islamic scholars seems to be a peanut as compared to the exorbitant legal fee charged by the legal counsels in the formal legal system.

A land/property dispute is also settled by a *Jirga* constituted by the political officer. In this mechanism, both the official and public sources of information and records can be used. In fact, this semi-informal legal system decides cases in accordance with Tribal *Riwaj* using official channels to which they use the term; ***Daftar-i-Sultani Mutabar Da***- means the official revenue record is more reliable and trustworthy. Nevertheless, it is expensive as well as cumbersome. An impoverished tribeman has no access to the Political agent and always loses the case. In this mechanism, might is the right for it is where money speaks. Once the decision is made, it is final as there is no right of appeal against the decision of the political officers in FCR. The appeal to Commissioner and the FATA tribune always falls on deaf ears. It will be appropriate to call the judgment of the *Jirga*as the executive orders of the Political agent using *Jirga* as a channel for issuance, for it is here that the elders of council are influenced by the political administration offering incentives and oiling their palms.

2.18. Dispute on mountains

The physical geography of the tribal territory shows that it has been made up of hard mountains, tough terrains, ridges and steep green valleys. The mountains are hard indeed but rich in minerals and other natural resources such as gold, copper, chromites, oil and gas etc. The terrains and ridges provide them defence against

enemies and invaders. Moreover, their valleys are sources of water as well as gateways for the raiders and traders.

Keeping in view these salient features of the tribal territory, one can safely infer the utility of mountains and the rising of disputes among tribes and *khels* thereon. The mountains are *Shamilat* and have no revenue record; therefore, all tribes and *khels* lay claims for and fight to getting share thereof. If a dispute crops up it gets ugly turn, for it becomes a conflict between tribes which results into huge human, social and financial losses. The *Riwaj* on mountains contends that the mountain belongs to a tribe/khel where the muddy water flowing down the hill-top damages its land, crops and population. The elders look into this aspect of the dispute and decide the case accordingly in addition to the revenue record or any other written evidence. If the belligerent tribes fail to arrive at amicable solution of *Sulah*, the dispute is resolved through *Riwaj.* The plaintiff produces two witnesses supported by any other historical evidences, if not; the defendants take oaths on Quran in support of their claim. It is here that maximum numbers of the tribesmen take oaths being shareholders in the *Nikat system*. It has the same *Riwaj* as that of land. It must be mentioned that *Riwaj* on mountains has no variation in its application across the tribal belt whether it is decided by a *jirga* constituted under FCR or by the tribesmen themselves.

Let's have a glance on the real story of a war on mountain fought in North Waziristan to which I am an eye-witness.

It was an autumn of 1995; cold breeze was blowing down the mountains top; leaves of trees were dry and crispy pale falling down on the rocky soil giving a panorama of the belief among the tribesmen that something wrong-

cruelty, oppression or violence had occurred; and that nature was immensely flared up to retaliate. The folksmen were whispering as to what had happened as they were hearing the sounds of artillery. The sound was coming from westward along the bank of the Tochi valley. The elders of the folk knew it; therefore, they brought it into the knowledge of the people that a dispute between Idak, a khel from Dawar's tribe and Bora khel, a khel from Wazir tribe had arisen for which they were fighting with heavy weapons to capture the mountain-tops. It is pertinent to mention that the people of North Waziristan, to whom we call *Utmanzai* as a whole, are divided into two tribes - Wazir and Dawar. The *Uthmanzai* are further bifurcated into two groups, namely, *Spin Gund (*White group) and *Tor Gund* (Black group) irrespective of the tribes they belong to. Our elders chose to be neutral because Idak, Bora khel and Hassu-khel were all from *Spin Gund*. Engineer Abdul Qayum Afridi has defined *Gund*, "as the alliance between two families to fight jointly against their common enemies. They are bound by a pledge called *teega*. The alliance usually occurs among different *khels* of the tribes." Anyhow, the fighting continued unabated for Sundays of the months and resulted into huge human losses.

Hajji Arsala Khan (Late), the elected Member of National Assembly from North Waziristan, was hailing from Hassu-khel. The elders met him and asked him to talk to the then political agent to announce ceasefire and bring the tribesmen down from the hill-tops. Hajji Sahib did as desired by the elders. The political agent yielded and constituted a Jirga to negotiate with the warring factions. The elders led a *Lashkar* of the tribe waving white flags in the air - a sign of peace and ceasefire, and evacuated the *Morcha* (trench) built in the mountains. The elders of Jirga succeeded in making ceasefire *(teega).* The political

administration ordered the Frontier Corps personnel to occupy the hill-tops. After ceasefire, the political agent levied a fine of Rupees five million on each tribe and sentenced forty men of each tribe to imprisonment for indefinite period on the recommendation of the *jirga*. The orders of the political agent were honoured in letter and spirit; however, later on the prisoners were released on the request of the Jirga. The *jirga* divided the disputed mountain between Idak and Bora khel under the formula that the portion of the mountain facing towards Idak was apportioned to Idak and the portion facing towards Bora khel was apportioned to Bora khel. A narrow strip was declared as *balapathar* (barren land) which was left to be under the control of the political administration.

Here one can see the significance of *Riwaj* mechanism of conflict resolution. The dispute involved killings of fifteen men and huge financial loss. The abortive efforts of the political agent were exhausted to maintain law and order by using force. However, the constitution of a Jirga brought about positive results and a ceasefire was held following Riwaj rules of the game. The council of elders maintained peace as well as upheld the authority and sanctity of the FCR.

The legality of the Jirga's judgment in the instant dispute might be questioned as the Jirga didn't hold which tribe was wrong and why, but it was made in accordance with customary laws comprehended by the elders using their own logic and reasons. They didn't see who was right or wrong. Their job was to maintain peaceful social order which they did. Human lives were lost on both sides more or less equally. Prisoners were released, for neither they could be killed due to the *Riwaj* of *Badal* nor could they be kept for indefinite period because of the non-availability of regular prisons. The dispute was destined to be settled through Jirga soon or later. Both the tribes

agreed on the judgment that made its legality itself, for it caused a peaceful social order required at that point in time. The instant case might be compared with any International hot war in which enemy devastates enemy having no regard to morality, albeit both sides strive to uphold International laws and the UN resolutions, if any. The difference between tribal war and hot war, *Riwaj* and International law is that in the former neither any tribe is powerful enough to eliminate other nor any tribe is allowed to do so because of the balance of power among tribes and existence of the balancer in the garb of the political agent. In the latter case, one country may be powerful enough to destroy other and the International community will just see and wait. The UN will condemn or supports the powerful and the balancer might be either the aggressor himself or will side with the aggressor. In a tribal war, human lives are countable and priced but in national war it is otherwise.

However, the role of *Riwaj* among tribes and that of International law in world politics have undergone considerable changes. *Riwaj* has evolved multiples patterns in various tribes across tribal areas and global politics have taken different tinge and shades at world level.[65]

3.19. Business disputes in Riwaj

In the ancient time when the tribal areas were void of economic development and there was no writ of central authority, the tribesmen would depend on agriculture, farming and cattle for their livelihood; therefore, there was an abject poverty among the tribesmen. Mostly, they would have disputes on land, mountains, water and trees. With the creation of Pakistan and their consentient joining therein, the economic status of the tribesmen also

changed. New venues of earning livelihood in Saudi Arabia and the United Arab Emirates opened. The tribesmen started sending their remittances to their parasite families in Pakistan which brought about drastic changes in their socio-economic lives. However, the generation of economic activities resulted into business disputes among the tribesmen such as disputes on transport, visas, weapons and ammunition, trade, hoteling and tender award etc.[66]

Business disputes are usually settled through the prevailing local rules and principles of the concerned business by adopting the *Riwaj* mechanism of dispute resolution. The disputants strive to resolve the dispute through *Rogha/Sulah* in the first instance. If *Rogha/Sulah* fails to work, then the dispute is settled by *jirgamar* of the concerned business. They examine and cross-examine the witnesses and the written evidences thoroughly and announce the judgment in front of the disputants on the occasion. It must be mentioned here that *Riwaj* or *Riwaj Le* has no application in the business disputes; therefore, amicable solution is sought to settle the dispute in accordance with the concerned business rules and principles. However, if the business transaction involves conditionality or is linked to something valuable in lieu thereof, the matter can be referred to a *jirga* for *Riwaj* provided any business party retracts therefrom and causes a dispute.[67]

In the nineteenth century, if the defendant (borrower) would deny the loan of the plaintiff (lender) amid strong witnesses, the plaintiff would either take oath on Quran himself or would ask the defendant to take oath. If the latter would refuse to do so, the plaintiff would win the

case and the defendant would become liable to pay the amount.

In today's tribal *Riwaj* disputes are, by and large, resolved through *Sulah* and seldom disputants resort to *Riwaj* as the latter involves *Riwaj L*e on the part of the denier which involves financial loss to the claimant. Sometimes, one business party turns defaulter and cannot pay its liabilities. In the instant case, the matter is referred to a Jirga of the concerned *Narkhyan.* In fact, the default party never denies the liabilities of the business partners but seeks respite to pay the liabilities as well as reduction in the profit margin which is usually agreed upon to settle the dispute amicably. The default party is usually protected by the business partners on all accounts so that the money of other partners might not be lost. However, the defaulter always faces the music from the investors and gets humiliated in the public.

The dispute on debt is resolved in accordance with the terms and conditions of the loan agreement. If the defendant denies to have borrowed any loan from the plaintiff, the latter produces the written evidence of money lent, if not, the former takes oath on Quran that he is not liable to retire the debt. It must be mentioned that interest on the loan given shall not be claimed against the Muslim borrower, for interest/usury is intensely prohibited in Islam and enjoins upon the followers to avert usury and help their Muslim brethren through *Qarza-e-Hasana* (loan free of interest). Sometimes, loan turns into bad debt and becomes a headache to recover. It is here that leads to a dispute and sometimes enmity. When the lender fails to recover the loan by using all options he resorts to aggression and holds the borrower as *yarghamal* (hostage) and inform his family members to repay the loan. In such a case, the elders and the well-wishers of both the parties hold a *jirga* to settle the dispute amicably.

The *jirgamar* grant a respite and timeline to the borrower to return the principal amount only – even at times the *jirga* reduces the principal amount in lieu of holding the borrower as *yarghama*l i.e., the defilement of the family honour of the borrower. The *jirgamar* also see if the borrower is a habitual non-payer and his family members have publicly announced to have severed all relations with their kinsman. They also announce they will not be liable to return the amount if people enter into any financial transaction with their kin.[68]

To sum up, Riwaj has taken its own course based on the prevailing customs, habits and traditions of the tribesmen and collective wisdom of the tribal elders. *Riwaj* has firmly ingrained in the minds of the people of Waziristan, Khyber, Kurram and Orakzai Agencies. It has less effective role in the maintenance of social order in Bajaur and Mohmand Agencies. In these tribal areas, FCR has taken a leading role in dispute resolution both in the protected and non-protected areas of the Agencies. It must be reiterated that non-codification of *Riwaj* and its neglect by scholars and researchers have caused a great loss to the very assets of the Pashtuns' culture in general and culture of the tribesmen in particular. There are many aspects of *Riwaj* such as betrothal, marriage, succession, bastardy, partition and other social issues which couldn't be discussed and need scholarly research to collect thorough original and secondary data so that it may be examined, analysed and codified in the light of the statutory laws in Pakistan.

REFERENCES AND NOTES

1. James W Spain, *The Ways of the Pathan*, (London: Robert Hale Ltd,1962), p.46,47
2. Dr.Taj Muhammad Wazir, *Waziristan ke Rasm-o-Riwaj ka Shari Qawanin ke sath Mawazna aur Pashtuno ki Tarikh*, (Islamabad: Misak Enterprises, 2014), p.279
3. Riwaj-e- Kurram called Turizona written in 1944 and translated into Urdu language in 1948.
4. Interview with Malik Daud Jan Dawar, Hassu khel (North Waziristan), March 15, 2015.
5. Riwaj-e-Kurram
6. Interviews with Malik Khan Afzal Afridi (Qambar Khel, Khyber Agency), Jan 10, 2017 and Malik Zardullah, Zeli khel (SWA), Jan 13, 2017
7. *Reforming the Jirga system: Sensitization on fundamental human rights*,(Islamabad: Community Appraisal & Motivation Program (CAMP), 2013, p.51
8. Interview with Ahmad Khan Orakzai, a retired Deputy Secretary Law & Order FATA, Secretariat, Peshawar, 08 April, 2015.
9. Khan Abdul Ghani Khan, *The Pathan*, p.29 available at http://pdfbooksfree.pk/the-pathan-by-khan-abdul-ghani-khan/, accessed on 16 June, 2016
10. Interview with Malik Tarin Khan, Lund Muhammad khel (North Waziristan), 22 March, 2015.
11. Dr.Taj Muhammad Wazir,534
12. Riwaj-e-Kurram
13. Amended frontier crimes regulation, 1901: section (1), (2).

14. Dr.Taj Muhammad Wazir,p.534
15. Interview with Malik Usman khan Dawar, North Waziristan, 10 January, 2016.
16. Riwaj-e-Kurram
17. Interview with Malik Rajab Ali Turi (Parachinar), November 11, 2016.
18. Interview with Malik Abdul Ghanoor, Hassu khel (NWA), Jan 20, 2017.
19. Interview with Malik Khan Afzal Afridi, Jan 10, 2017.
20. Interview with Ahmad Khan Orakzai, 8 April, 2015.
21. Muhammad Bilal, *Pak Passes Anti-honour killings and Anti-rape Bills,* available athttps://www.dawn.com/news/1288177, accessed on 25 May, 2017
22. Interview with Malik Daud Jan Dawar, March 15, 2015.
23. Ghulam Qader Khan Dawar, Cheegha, the Call, (Sweden: I. Aleph, 2014), p.239
24. Ibid, p.
25. James W Spain, p.47,48
26. Dr.Hanif Khalil, *Pashtoon Culture in Pashto Tappa, (*Islamabad:National Institute of Historical & Cultural Research,(Quaid-i-Azam University,), p.64,65
27. Interview with Malik Ashraf Dawar, Darpa Khel (North Waziristan), March 5, 2015.
28. Interview with Ahmad Khan Orakzai, 08 April, 2015.
29. Riwaj-e-Kurram
30. James W Spain, p.46
31. Interviews with Malik Usman Dawar and Malik Khan Afzal Afridi, Jan 10, 2017.

32. James W Spain, p.47,48
33. Interview with Naushar khan, a retired Political Officer, Mir Ali (North Waziristan Agency), May 9, 2015.
34. Engineer Abdul Qayum Afridi, *The Hill Tribes Along the Durand line,* (IRIS Enterprises, University Road Peshawar), 2003, p.69
35. Interview with Malik Usman Dawar, Jan 10, 2017.
36. Riwaj-e-Kurram
37. Interview with Malik Khan Afzal Afridi, Jan 10, 2017.
38. Interview with Ahmad Khan Orakzai, 08 April, 2015.
39. Interview with Malik Abdul Ghanoor Dawar, Jan 20, 2017.
40. Riwaj-e-Kurram
41. Interview with Malik Khan Afzal Afridi, Jan 10, 2017 and Riwaj-e-Kurram
42. Interview with Malik Tarin Khan, 22 March, 2015.
43. Interview with Ihsan Dawar, a journalist and analyst from North Waziristan, Feb 20, 2016.
44. Interview with Malik Usman Dawar Jan 10, 2017, Riwaj-e-Kurram, and interview with Malik Khan Afzal Afridi, Jan 10, 2017.
45. Interview with Ahmad Khan Orakzai, 08 April, 2015.
46. Interview with Malik Khan Afzal Afridi and Malik Usman Dawar, Jan 10, 2017.
47. Interview with Malik Usman Dawar, Jan 10, 2017, Malik Lawangeen Afridi (Malik Din Khel), Feb 19, 2015, and Malik Zahoor, Kurram Agency, 05 March, 2015.
48. Dr.Taj Muhammad Wazir, p.460

49. Interviews with Ahmad Khan Orakzai, 8 April, 2015 and Ihsan Dawar, Feb 20, 2016.
50. Dr.Taj Muhammad Wazir, p.443,445,446
51. Riwaj-e-Kurram
52. Interview with Malik Lawangeen Afridi, Feb 19, 2015.
53. Interview with Naushar khan, May 9, 2015.
54. Interview with Malik Tarin Khan, 22 March, 2015.
55. Dr.Taj Muhammad Wazir, p.452
56. Interview with Malik Ashraf Dawar, March 5, 2015.
57. Riwaj-e-Kurram
58. Interview with Naushar khan, May 9, 2015.
59. Riwaj-e-Kurram
60. Interview with Ahmad Khan Orakzai, 08 April, 2015.
61. Riwaj-e-Kurram, interviews with Malik Khan Afzal Afridi, Jan 10, 2017, Malik Zahoor, March 5, 2015, Malik Usman Dawar, Jan 10, 2017.
62. Dr.Taj Muhammad Wazir, p.438
63. Riwaj-e-Kurram
64. Interview with Malik Abdul Ghanoor Dawar, Jan 20, 2017.
65. Interviews with Ahmad Khan Orakzai, 08 April, 2015 and Naushar khan, May 9, 2015.
66. Interview with Ihsan Dawar, Feb 20, 2016.
67. Interview with Malik Tarin Khan, North Waziristan, 22 March, 2015.
68. Dr. Taj Muhammad Wazir, p.429-442

CHAPTER 3

RIWAJ, ISLAM AND PLURALISM

The discussion in this chapter revolves around three basic misconceptions about Pashtuns in general and the tribal in particular. These misconceptions include - one, all Pashtuns must be Muslims; two, Pashtuns tend to be rigid and fanatics due to their religious affinity; and third, Pashtun is one moment a saint, the other a devil (*Pashto nimkufar da). The* conceptions are absolutely absurd, ridiculous and need to be wiped out from the annals of Pashtuns' history. In fact, the misconceptions are writing on the wall for those who wish to cease the decadence of Pashtuns and *Pashtunwali*. In this chapter, effort has been made to pinpoint the flaws that exist in *Pashtunwali* and *Riwaj* in relation to the global environment. I have also strived to expound religious pluralism among the Pashtuns to prove that rigidity and extremism in Pashtun's character is not due to religious bigotory but due to the rigid code of conducts, social customs and usages of the Pashtun society. Let us examine the above misconceptions one by one with excuse in anticipation to those who don't agree with my viewpoint.

3.1. Pashtun must be Muslim

A Pashtun must be Muslim is a common perception that exists in the minds of many scholars – Pashtuns and non-Pashtuns. Perhaps this perception arose due to the common behaviours and practices prevalent in *Pashtunwali* and Islam or due to the concept of en-bloc conversion of Pashtuns to Islam under the chieftainship of Qais Abdur Rashid. Dr.Hanif Khalil refers to Hamza

Baba's poetry as, "**Daaba we daroghche da Islam na ye makh sthunkrlo, Sok che pa rekhtiya da pukhtanay abay rawry we",** means that, "it will be an absolute lie, if it is told that a person has reverted from Islam regarding that person who has born to Pakhtun mother". On another occasion he says, "**Waaiza bas kra pa her hal ba mussalman aosma, Nore ba saghwarey zamanat kho che afghan aosma",** means that, "O preacher take my words that I will remain a Muslim in all situations and guarantee for this is the fact that I will remain Afghan or Pashtun forever". Maulana Abdul Qader also states that "He who born Pashtun must be Muslim". Dr.Hanif refers to James W Spain and says, "Islam came to the Pathans earlier than to most other peoples of the sub-continent. Since 10th century all of them have been Muslims. Most are of the Sunni persuasion, although there are pockets of Shias here and there" Dr.Hanif Khalil refers to Dr.Kalimullah Sadam in this regard and writes, "Pakhto folk poetry is deeply influenced by Islam, because there is no non-Muslim in Pakhtun nation and any tribe of Pakhtuns. In the beginning of the 11th century when Pakhtuns embraced Islam, they found Islam very similar to their particular customs. That is why they need not much to change in them. You have heard a lot of Pakhtun women while talking that they consider every Muslim a Pakhtun and every Pakhtun a Muslim".[1]

Let us analyse the conception in a logical manner. A Pashtun would behave in a respectable manner to all creatures of God which must be the characteristic of a true Muslim. He would always speak the truth, think good and do good deeds. Both Islam and *Pashtunwali*

emphasize on unity and equality. Hospitality and sanctuary, which are extended even to one's worst enemy, are the hallmark of a Pashtun as well as a Muslim. A Pashtun must be straightforward, loyal and committed to one's cause which a true Muslim must embody in his person. Allah, being the Creator, has superbly defined a Muslim in the Holy Quran: “It is not righteousness that you turn your faces to the East or the West, but truly righteous is he who believes in Allah and the Last day and the Angels and the Books and the Prophets, and spends his money for love of Him on the kindred and the orphans and the needy and the wayfarer and those who ask for charity, and for ransoming the captives; and who observe prayers and pays *Zakat*; and those who fulfil their promise when they have made one, and remain patient in poverty and affliction and steadfast in time of war; it is these who have proved truthful and it is these who are the God-fearing”.[2]

By comparison we can safely say that Pashtuns perfectly fulfil this criterion and possess all the qualities their Creator has highlighted in the aforementioned verse of the Holy Quran. If we examine the portion of the verse relating to human affairs, it seems that Pashtuns were Muslims prior to their conversion to Islam. Moreover, Pashtuns exist since the dawn of humanity as Maulana Abdul Qader narrates while Islam came among the Pashtuns fourteen centuries ago. History has no empirical evidence about the actual religion of Pashtuns before Islam; however, it is true that they came across different races that came to this part of the world in the form of invaders and traders. They might have adopted

their religions as is evident from the contradictory theories of the ethnic origin of the Pashtuns. For instance, if we believe in Israelite theory, we have to accept the Pashtuns as Jews; if they are Indo-Aryans ethnically then they must be Hindus by religion; if they are accepted as the descendants of Qais Abdur Rashid we need to understand that Qais would have a religion other than Islam before conversion. Perhaps he was a Hebrew, which is evident from his name, Qais. His name Abdur Rashid is said to have been attributed to him by the Holy Prophet. Nevertheless, this embrace of various religions explicitly signifies the extent of historical religious pluralism existing among the Pashtuns.

Before going to dilate upon the misconception and putting arguments against it, a brief account of the origin of Pashtun and Pashto language needs to be highlighted to help us understand the nature of a Pashtun, for it is genetic proclivity and language constraints that overwhelm the mind and soul of the individuals. Like muscular and nervous systems of a body, language has its own structural system that maintains mental integration of human beings. Language is basically a series of meaningful voices come out through the system of vocal cords that preserve the entire history, culture and social behaviours of that ethnic group.[3] To begin with, the history of Pashtuns has many dimensions as far as their origin of language and emergence as a nation is concerned. History reveals that the origin of Pashtuns can be traced back to thousands of years in the annals of history when the entire world was living in the state of lawlessness wherein there was no concept of the nation

state system. The Pashtuns lived, in fact, in a very strategic location at that time too; therefore, they had to face the brunt of all invaders from the North and West. Olaf Caroe has made exemplary efforts in his book, 'The Pathan', to determine the origin of Pashto language. He states that Pakhto/Pashto is an Iranian language which has borrowed wide influences from Indo-Aryan culture that must have spread Gandhara during the reigns of Chandragupta and Ashoka.

After a lapse of three centuries between the fall of Maurya dynasty after Ashoka (227.B.C) and the establishment of the Kushan Empire of the Indo-Scythians, the Graeco-Bactrians, the Sakas and the Indo-Parthian dynasty ruled Gandhara and brought the frontier regions under the domain of the Central Asian conquerors. The Graeco-Bactrians reigned over Gandhara for almost a century (185-190 B.C) when it was ruined by the deluge of Saka that came from the North and Baluchistan sides. It must be mentioned here that the entire population during this period was Iranian and spoke an Iranian language; however, there existed a Graeco-Bactrian influence among the upper-class of the Gandhara valley. The Afridis still link their origin to the Greeks due to this reason and perhaps not merely due to the passage of Alexander, the Great over the Khyber Pass.

The decadence of Graeco-Bactrian rule as a result of fratricidal war led to the invasion of Saka and Parthian nomads who overran Gandhara and Persia respectively; established their dynasties and put an end to Hellenism which the Graeco-Bactrians had imposed on the Iranian world. However, the two nomads remained politically and

culturally close to each other. It is up to this period in history that the origin of Pashto can be linked to the Saka-Parthian dialect of the Iranian influence. It is also an admitted fact that Pashto language has widely borrowed influence from north-western India, but its parentage lies in the eastern Avesta which is a Zoroastrian scripture of the Prophet Zoroaster whose teachings and gospel were followed by the Achaemenians in the eastern part of Iranian world who is said to have had Iranized the Gandhara for two centuries before Ashoka. The reason for Indian and Iranian influences is seemingly due to the strategic location of the plains of Gandhara, the tough terrains and deep ridges of Waziristan and Tirah valley of Khyber Agency which lie between Iranian and Indian world (today Iran and Pakistan). Thus, Pashto is a language which has strong features of the two worlds in which Iranian influence pre-dominates.[4]

About the origin of Pashto language Maulana Abdul Qader writes that human civilization evolved in this part of the world and got nourished in its cradle and grew out of here; therefore, he thinks, had there been any language spoken by the people of that area of Central Asia, it would have been Pashto to lay claim to. In view of this perception if the primitive origin of Pashtuns is accepted, their language must be recognized as the mother or grandmother of all languages of the world.

Highlighting the ethnic Pashtun's genesis in his Muqadma on the book, 'The Pathan' authored by Olaf Caroe, Maulana Abdul Qader says that the author didn't take much care despite the fact that his account of Pashtuns is based on more than two thousand years of the Pashtun's

history. The word Pathan didn't exist at that time. It was a word like Pakhit or Pakhitin that took the shape of Pashtun or Pakhtun later on. When the Pashtuns would go on excursions to Hindustan or would take military expedition they would stay and forget their mother tongue and would adopt the local language. Admittedly, the Pashtuns take pride in their race; hence, they would strive to keep their identity as separate community there. It was this Pashtun indeed who came to be called as Pathan." He refers to the book, 'Pakhto' authored by Mian Ziauddin and says, "All Pashtuns living in Afghanistan are Pashtuns but all Afghans are not Pashtuns. It is quite a valid argument indeed. Afghanistan is an abode of multiple races such as Pashtuns, Uzbeks, Tajiks and Hazara. They are Afghans as they live in Afghanistan, but they are not Pashtuns. Olaf Caroe has collected ample historical information of the Pashtuns from some ancient races such as Saka, Kushan, Sassanid and Huns etc., but the period which he refers to is when man was living in a state of nature and was the evolution of human social life. At that time, there was no concept of nation, tribe or *khel* or, he says, it was a period when human civilization was crawling on its knees. Here it grew and expanded from and got antecedence in language.[5]

There is a mounting confusion among the archaeologists, anthropologists and historians about the ethnic origin of the Pashtuns. They have made efforts to arrive at a common ancestry of the Pashtuns but to no avail. The more they dive into the sea of knowledge to dig out the origin of Pashtuns the greater they get puzzled, for every Pashtun tribe links itself to the origin of its choice. Some

scholars knot the Pashtun's origin to Arab ancestry due to Qais alias Abdur Rashid, whose conversion to Islam proved to be a milestone in the history of Islam and Pashtuns. Others relate the Pashtun's origin to the lost tribe of Jews due to similarities between *Pashtunwali* and the Jewish conducts and way of life. Some scholars perceive the Pashtuns to be Aryans; others believe they are a mixed race. Khan Abdul Ghani Khan mentions in his book, 'The Pathan', "Whatever he might be but he was not a Jew, for where will you find a Jew who will tell his child about war and courage, death and glory. He is a mixture of every race that came to India from the heart of Asia – Persians, the Greeks, the Mongols and the Turks".[6] Professor Preshaan Khattak also vindicates the perception of Maulana Abdul Qader and mentions that a Pashtun tribe inhabited the mountains of Ghor before the advent of the Aryans, the Israelites and the Greeks and would lead their lives in accordance with the glorified cults of *Pashtunwali*. They might have borrowed certain best practices and rites from the aliens, but they were none but Pashtuns.[7]

From historical perspective one can say that the Pashtuns followed *Pashtunwali* that was unknown to most of the contemporary societies in the Christian as well as Medieval era. They knew how to extend hospitality and provide protection to guests. They would understand how their disputes could be settled through Jirga as they usually remained aloof from the clutches of the central authority. They had no state of their own; however, they were acquainted with warfare strategy and

could defend themselves against foreign aggression. They could raise a *Lashkar* against enemy within no time through *Cheegha* which was beyond the capacity of others at that time. Thus, it is a misconception in the minds of critics that a Pashtun must be a Muslim because *Pashtunwali* is a pre-Islamic phenomenon that exists in the Pashtun society since time immemorial.

Whatever the origin of Pashto as a language and Pashtuns as a nation might be, the main focus of this work is to present a truth before the readers that Pashtun's tribal society is based on the concept of pluralism where multi-religious groups co-exist. Each distinct group has full religious liberty and exercises its own rituals. They enjoy equal rights and face no coercion and intimidation in religious rituals and practices. One can see Hindus, Sikhs and Muslims work in the same premises and run businesses in the same market in Miranshah and Khyber Agency with impunity. The Tribal Riwaj is the same and equally applicable on all tribesmen irrespective of whatever religion, creed or caste they belong to. No doubt, they profess different religions, yet their common bond is *Pashtunwali* rather than religion. They are first Pashtuns and then Muslims, Hindus and Sikhs. This author met and inquired from Jug Mohan, a Sikh shopkeeper in *Karkhano* market about his ethnic origin. He replied that they are as Pashtuns as other Afridis are and follow *Pashtunwali* more than other Pashtun brethren. Manjeet Singh of Malak Din Khel replied to the same question and said that the Sikhs of Khyber Agency are Pashtuns; they are born in a Pashtun family and will die as Pashtuns. Bahak Singh of Tira said, “Whenever they visit India, people introduce them as *Tirawal* (people of Tira) and say that *Tirahwal* have come

as guests. When inquired about the origin of Sikhs in Khyber Agency, Bahak Singh replied that before the advent of Islam all Pashtuns were said to be Hindus. Some of them embraced Islam while others remained in their old religion – Hinduism. The father of Guru Nanak, the spiritual leader of Sikhs, was also a Hindu. When Guru Nanak born in 1469, he grew up among the Hindus, but he didn't inspire from the cults of Hinduism and introduced Sikhism. He visited all corners of the Sub-Continent including the borderland and converted many Hindus to his new religion. Bahak Singh said though he was not confirmed about the origin of the Sikhs of Tirah, yet they might be the Hindus converts to Sikhism. Whatever religion they have, he said, they are staunch Pashtuns and follow *Pashtunwali* rigidly.[8] Muazam Khan, a notable comrade and *Khudai Khidmat Gar* said that the grand grand-father of Sikh of Khyber Agency, Samad Khan Apriday was from Ghalzai tribe who was a close friend of Guru Nanak. He was so inspired from his friend that he converted to Sikh religion. He was a staunch Pashtun and nobody could point finger at his Pashtunwali.[9]This view of Muazam Khan might be true, but I couldn't authenticate it from any other independent source. Moreover, my paternal grandmother would say that there were many Hindus who lived in our village Hassu-khel before the creation of Pakistan under the protection of my grandfather as they were in minority at that time. They had their own property and ran businesses there. They had full liberty of exercising their religious rituals. She said that they would participate in

their social functions and vice versa. They would live in accordance with the tribal culture and were proud to be Pashtuns. This pluralism of the tribesmen proved when the political administration of Khyber Agency granted Lungi (Maliki) to Gurmeet Singh. Shahab Ali Shah, the then political agent of Khyber Agency, while talking to media, said that the Sikhs of Khyber Agency were the bona fide residents of the tribal areas. They did not have their own tribal elders to attest documents and become part of the traditional tribal Jirga to gain audience with the high-ups including the Governor. Gurmeet Singh said that though he was happy to be elevated as a tribal elder, yet the ultimate happiness would come when they would return to their homes in Tirah valley.[10]Besides the division of the Pashtun tribesmen on ethnic basis, the Pashtun society is also divided into Sunni-Shia, *Deobandi* and *Baralvi* sects, but when it comes to *Pashtunwali* they are first Pashtuns and then Sunni and Shia etc.

If we take the Pashtuns as a distinctive ethnic group, the concept of 'Pashtuns must be Muslims' comes true because an ethnic group shares a common ancestry, common language, socio-cultural norms and religious values. By this definition, the Sikhs of Khyber Agency and the Hindus of North Waziristan don't fall in the category of Pashtuns. Nevertheless, if we talk of Pashtun's nationalism, then the concept becomes redundant as nationalism embraces all ethnic Pashtun groups including Sikhs, Hindus as well as Sunnis and Shias. In addition, if by virtue of religion or creed a group of people fail to become a part of the community/nation, then the Bangash, Turi and Orakzai tribesmen professing

Shia'asim mustn't be categorized as Pashtuns. Moreover, there is inconsistency in the view of en-bloc acceptance of Islam by the Pashtuns. Some scholars claim the Pashtuns to have converted to Islam when Qais Abdur Rashid went to Medina and met the Holy Prophet (sm) to enter the fold of Islam along with his tribe. If it is so, then it must be in the beginning of the 7th century because Islamic revolution came in 611 AD. If it is true, then the remarks of James W Spain and Dr.Kalimullah Sadam that Islam came to the Pashtuns in 11th century must be wrong. Furthermore, if the latter view is valid then a question arises how the Pashtuns converted to Islam en-bloc.[11]

The Pashtun society also comprises a number of occupational groups such as *Dhum* (Drum-beater), *Zargar* (Jeweller), *Kulal* (potter) and *Trakanrh* (carpenter) who are looked down upon as people of low caste. They are perceived to be non-pashtuns on the basis of their blood-linage (here non-pashtuns refer to people of low caste) and disregard for *Ghirat* and *Nung*. They assume that the bloodline of a Pashtun is directly proportion to honour, courage and chivalry. Here again, I beg to differ with those Pashtun brothers who treat these people as low caste. I have seen people among these occupational groups who have shown their mettle in the battlefields and have surpassed those who claim to be Pashtuns. Besides, I have never heard/noticed the Pashtuns leaving these people stay home while they move to the battlefield to fight against their enemies. In fact, the *Dhum* has always spearheaded the *Lashkar/Cheegha* having *dhole* in his lap instead of a gun in his arm. The first bullet of the

enemy hits the *Dhum* as he leads the vanguard, though *Riwaj* inhibits the tribesmen to fire at the drum-beater. However, there are many examples of the tribal areas where the drum-beater of the tribe has met his fatal destiny in the tribal war. Similarly, the potters and the jewellers have never been spared from collection required for raising funds to meet the expenses of the tribal war. They have invariably participated in all tribal activities and have never legged behind the tribesmen in any facets of the tribal life. They are born Pashtuns to their Pashtun ancestors, speak Pashto language and follow *Pashtunwali* in letter and spirit. They fulfil the entire criterion of a true Pashtun and cannot be identified as low caste until introduced by someone.[12]

Ironically, the concept of caste system has immensely rooted down into the Muslim society in general and the Pashtun society in particular. The Pashtuns are said to have been Hindus at times; therefore, the caste system has startlingly rooted in the Pashtun society. Ghani Khan describes about the religion of Pashtuns as, “it is also obvious that he was a Buddhist before he became a Muslim and that he was a Hindu before he became a Buddhist.”[13] This indicates that they embraced Islam, but they didn’t enter into the fold of Islam in toto. They have forgotten the Islamic conception of universal brotherhood and have attributed different names to their co-members on the basis of their occupations. In fact, occupations don’t make human beings low in caste. History has unveiled that God sent prophets who had the same occupations of carpenter, potters and cobblers, etc. but

they were the most revered among the humans, being messengers of Allah. The Holy Quran says, “O human being! Without a doubt, We have created you from a male and female, and have made you into various nations and tribes, so that you may come to recognize one another. Definitely the most honoured among you in the sight of Allah is he who is the most God-consciousness. Surely Allah has full knowledge and is All-Aware”.[14]

Hence, we must understand the difference between the ethnic Pashtuns and the caste based Pashtuns. An individual, who is born in a Pashtun family, speaks Pashto language and follows the cults of *Pashtunwali* may be called as ethnic Pashtun while a person who falls by the above-mentioned definition but belongs to an occupational group is a caste based Pashtun lower in social status on the basis of occupation he holds. I must reiterate an occupation doesn’t make someone low in caste. Muazam Khan says that Shani Khan, the niece of Ghani Khan – the son of the Great Bacha Khan and brother of the Great Wali Khan, who led the Pashtuns in national and International politics, has opened a beauty parlour in the chamber of Ghani Khan that used to be the centre of arts and excellence during his life time. Does it mean that Shani Khan turned a barber after opening a beauty parlour and her blood turned into water to be driven out of the fold of *Pashtunwali*?[15] In fact, Islam denounces the division of humans on the basis of racial superiority and caste system; therefore, before conversion to Islam a Pashtun might be superior on the basis of bloodline as was commonplace in Hindus but

after joining the fold of Islam it doesn't make sense for a Pashtun to claim blood superiority over his brethren as Islam discourages caste system and enjoins upon the believers that all human beings are equal in the sight of Allah, for they have been created of Adam and Adam was created of mud. [16] This proves that the concept of 'Pashtuns must be Muslims' contradicts itself. The Pashtuns believe in pluralism for ages and would believe it forever.

The concept of pluralism among the Pashtun tribes seems to have developed due to the arrival of foreign invaders passing through the Pashtun territories that would have different ideologies and religious affinities. The religious pluralism and embodiments of multi-faceted values among the Pashtuns signify that they have adopted multifarious socio-religious values existing in various contemporary religions and societies. For example, they owe to Greeks for *Namoos* of women who would also keep their women within the four walls of their houses to protect their honour and *Haya* (modesty) and would fight if a chastity of a woman would be harmed; they would have taken religious pluralism from Buddha cults because Islam has little space for religious pluralism; and they owe to Islam for the concept of unity of God which has no place in other ordained religions of the world. In this regard, Ghani Khan states, "Each race has contributed something to his virtues and vices, looks and beliefs, religion and love-songs".[17]

However, the advent of Taliban proved to be a turning point for the pluralism among the Pashtuns. The religious

minorities abandoned the abodes of their ancestors and migrated to other parts of the country due to fear and wrath of the Taliban in Khyber Pakhtunkhwa and the tribal areas. The impacts of Taliban's extremist activities on *Riwaj* have been discussed in Chapter 4 of this book at length.

3.2. Pashtun tribesmen are rigid and fanatics

Pashtun tribesmen are said to have been rigid and religious fanatics. This perception seems to be true up to certain extent. Religion does not evolve in a society itself. It is ordained by God-Who is the Creator of all inmates-living and non-living. He does not permit accommodation in religious affairs and commands to follow the straight path based on high moral grounds. It is unfortunate for the Pashtun tribesmen indeed that *Pashtunwali* is also based on rigid and straightforward socio-cultural values. As mentioned earlier, *Pashtunwali* dates back to pre-Islamic era; therefore, the rigidity and fanaticism of Pashtun tribes in moral values and their commitment to a righteous path further reinforced with the advent of Islam among the Pashtuns. We find greater commonalities between the cults of *Pashtunwali* and the teachings of Islam which manifest that Allah chose the customary laws of the Pashtuns for the rest of the humanity and ordained such commandments in the Holy Quran which overlap with *Pashtunwali* and *Riwaj*. Tipu Muhabat Khan refers to the co-relation between Riwaj and Islam described by a Pashtun woman in conversation with Benedicte Grima as, "the event itself is Sharia but what we do it is *Riwaj.* The *Nikah*, for instance, is Sharia but our celebration with guns, singing and dancing is *Riwaj.* Death and funeral rites are *Sharia* but our weeping and lamenting is our own

customs quite against the law in Islam. Going to visit the sick is *Sharia*; the practice whereby only the elders can go is *Riwaj*." On the contrary, *Riwaj* has many a practices which seem to be un-Islamic and has led to the concept that the Pashtun is one moment a saint and the other a devil *(Pashto nimkufar de)* or Pashto is a partial infidelity.[18]

The two misconceptions have been explained in the light of the commonalities and distinctions exist between Islam and *Riwaj/Pashtunwali* in the succeeding sections of this chapter. The commonalities justify that the tribesmen are rigid and fanatics because of the rigid elements of *Pashtunwali* rather than their affinity with religion while the distinctions reflect that *Pashtunwali* being partial infidelity is a misconception.

3.3. Commonalities in Riwaj and Islam

Mian Gul Abdul Wadud Badshah's explanation of *Pashtunwali* reflects the real convergence between Islam and *Pashtunwali.* He says, "it is the name given to the valour, sense of honour, and lex non-scripta of the nation…hospitality, generosity, bravery, truthfulness, straightforwardness, keeping of promise, patronage of the weak, giving of shelter to all including enemies, moral courage in claiming one's rights, sacrificing one's life for one's personal as well as national honour, dying in the name of religion, and a number of other desirable attitudes and worthy traditions."[19]Dr.Hanif Khalil refers to Jens Enevoldson and says, "The faith of Islam is the third strong common bond between the Pakhtun tribes, and Islam, being faith which demands all, body and soul

naturally pervades all customs and traditions of the people as well as language and literature". [20]

The commonalities and distinctions have been discussed in the light of the Quranic verses, Hadiths of the Holy Prophet (PBUH), Pashto proverbs and folklore *(Tappa)* of the Pashtuns which are the basic sources of Islam and *Pashtunwali* respectively. The commonalities deduced from the above definition of *Pashtunwali* are highlighted as under:

3.3.1. Rights of children

Children's rights in Islam overlap with the *Riwaj* of the tribesmen. A child is like a fragrant flower blossoming in spring to give fragrance to his/her family. He/she is like a rising star that illuminates the lives of his/her parents in dark. The Messenger of Allah said: "A virtuous child is a fragrant flower from the flowers of children." In Islam and *Pashtunwali* a child has rights over his family even before he comes to this world. A Muslim/Pashtun has to marry a woman who has never compromised on her chastity and is known for modesty and decency. Besides, a child has a right over his parents to give him good name; provide him reasonable food and appropriate dress; and educate him to the best of his abilities. The rights of a child in Islam have been explicitly highlighted in the following verses of Quran and Sunna:

"And don't kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin." (Quran: 17:31).

“O you who believe! Ward off yourselves and your families against a Fire (Hell) whose fuel is men and stones”. [Quran: 66:6]

"Upon death, man’s deeds will (definitely) stop except for three deeds, namely: one, a continuous charitable fund, endowment or good will; two, knowledge left for people to benefit from; and three, pious, righteous and God-fearing child who continuously prays Allah, the Almighty, the soul of his parents.” (Muslim: 1631).

Abd-Allah (may Allah be pleased with him) narrated that the Messenger of Allah (peace be upon him) said: “All of you are guardians and are responsible for your wards. The ruler is a guardian and the man is the guardian of his family; the lady is a guardian and is responsible for his husband’s house and his offspring (children); and so all of you are guardians and are responsible for your wards.[21] (Bukhari: 7:128)

"A father has to impart all good manners to his children-in eating, drinking, dressing, sleeping, going out of the house, entering the house and all other affairs. He should inculcate in them the best attributes of love of sacrifice, helping others, chivalry and generosity. He should keep them at bay from evil characteristics such as cowardice, stinginess, lack of chivalry and lack of ambition". (Muslim: 8:44).

A child (here refers to an orphan) has also rights over the community which is evident from the Quran and Sunna.

“Treat not the orphan with harshness." (Quran: 39:9).

"Did He not find you an orphan and give you shelter?”(Quran: 2:215).

"I and the one, who looks after an orphan, will be together like this in the next world, and then he raised his index and a middle finger together".[22] (Muslim: 5296).

In *Riwaj* a child has been granted more right of protection than any other community. The tribesman is the real shepherd of his flock. He cannot bear his child (male or female) to be immoral and indecent. Similarly, the tribeswoman plays the best role of the shepherd. She prefers to be home to cater for the needs of her child, for she has no burden of financial obligations on her shoulder. A child cannot be injured or even killed by his staunch enemy in *Riwaj.* If a child becomes the victim of animosity, the folk of the *khel* take collective action to punish the perpetrator. Though there are no orphanages established by the government or any non-governmental organizations in the tribal areas, yet the orphans there are more secured than the orphanage of the developed world. An orphan becomes the liability of his close paternal or maternal kinsmen in *Riwaj*. It is contrary to *Nung/Ghirat* in a tribal culture to neglect the orphans or grab their wealth and property as the *tarbore* will point finger at and will give them *paighore* of being 'Na Pashtun' (means they are not like Pashtuns). The rights of children before birth among the Pashtun tribesmen have been conceptualized in the following proverbs:

"De shey ghishe sha zimna vee"

English: Fine meat gives a fine taste. Or Good soup can be made from fine meat.

"*Che sanga plaar hum hagha say zwey vee".*

English: He is his father's son.

“If you do not marry a gentle woman, she will not bear you a gentle son”.

“*Da leva bachai leva vee”*

English: Wolf gives birth to a wolf.

"*Da maar bachai maar wee"*

English: The snake's baby is also a snake. (Nature can't be changed)

"Kha Khaza jannat dey"

English: A cheerful wife is the joy of life.[23]

A disgusting phenomenon exists among the tribesmen. They would not care to give the right of a good name to a child. They would give them funny rather ridiculous names to their children, such as Elaj Muhammad Khan, Belot, and Mandos etc. which have no meaning either in Pashto or in Arabic languages. Besides, a male child has a preference in property over the female child that is against all religions and laws.

3.3.2. Neighbour rights

Neighbour holds a special status in Islam and *Pashtunwali*. Both encourage their respective followers to treat their neighbours in a gentle manner ignoring the fact whether he/she is a Muslim or non-Muslim. Both Islam and *Pashtunwali* urge to look after the needs of their neighbours; never scorn their gifts and never harm them. The neighbour has to cater for all necessities of the neighbour such as food, dress, health and education of his children. In Islam the rights of neighbour have been expressively mentioned in the Quran and Sunna. Its importance can also be found in the Pashtun code of

conducts - the *Pashtunwali.* Nevertheless, a question arises, who the neighbour is? Let's have a definition of neighbour in the light of Quran and Sunna:

“Worship Allah and associate nothing with Him and to parents do good, and to relatives, orphans, the needy, the near neighbour, the neighbour farther away, the companion at your side, the traveller, and those whom your right hands possess. Indeed, Allah does not like those who are self-deluding and boastful.” (Quran: 4: 36)

The Holy Prophet (PBUH) has defined a neighbour in a subtle manner. He says, "a neighbour is not just the one next door but includes all those up to forty houses in all directions - effectively a whole neighbourhood”.

The Messenger of God says, "He is not a Muslim who eats his fill and lets his neighbour go hungry". (Bukhari)

Abu Hurairah (R.A) reported that the Messenger (PBUH) of Allah said: “O Muslim women! No one of you should consider insignificant (a gift) to give to her neighbour even if it is (a gift of) the trotters of a sheep”. (Bukhari: 6017).

A Pashtun is more mindful of his neighbour than simply a Muslim. He follows the injunctions of Islam as well as the dictates of *Pashtunwali.* He keeps friendly and neighbourly relations with all irrespective of creed, caste and religion. The most striking feature of *Pashtunwali* is *Hamsayatub*. The neighbour under protection becomes the liability of the Naik. Besides, the Riwaj of *Ashar*, *Lokhi Warkawal* and *Cheegha* vividly reflect the significance of neighbour’s rights in *Pashtunwali.* This convergence between Islam and *Pashtunwali* leads the critics to

contend that Pashtuns are rigid and religious fanatics due to their religious affinity while the truth is otherwise.[24]

3.3.3. Melmastiya

Melmastiya of the guest has a significant place in Islam and *Pashtunwali*. A Muslim and a Pashtun consider the guest as the blessing of God. They respect him and extend hospitality in accordance with their capacity and affordability. They perceive that hospitality promotes love and affection in the community. They don't provide accommodation to their guests only but serve them with the best of food and fulfil all their moral needs. The place of hospitality in Islam is evident from the following verses of the Holy Quran and the Hadiths of the Holy Prophet (PBUH).

"Has the story reached you of the honoured guests of Abraham? Behold, they entered his presence and said, "Peace!" He said, "Peace!" (And thought they seem) unusual people. Then he turned quickly to his household, brought out a roasted fattened calf, and placed it before them. He said, "Will you not eat?" (Suratadh-Dhariyat: 24-27)

The Holy Prophet says:

"He, who believes in Allah and the Last Day, should accommodate his guest according to his right. A man asked, "What is the guest's right?" He replied, "It is to accommodate his guest for a day and a night, and extends him hospitality for three days. What is beyond that is charity." [Bukhari: 44: 669].

Rights and obligations co-exist. The guest has certain rights over the host as embodied in the Quran and

Hadiths, yet he has certain obligations to fulfil. He cannot stay for more than three days as a guest. The Holy Prophet states:

"It is not permissible for a Muslim to stay so long with his brother till he makes him sinful. He was asked how he can make his host sinful. He replied that the guest prolongs his stay till nothing is left for the host to offer him."

The guest has been directed to seek permission before entering the house of the host. The Almighty Allah says:

"O you who believe, don't enter houses other than your own until you have sought permission and saluted their inmates; this is better for you that you may remember". (24:27).[25]

Pashtunwali apportions more respect to the guest than Islam. For the tribesman a guest is not merely a person who arrives to his home and needs accommodation and food etc; he is an honour of the family to be protected at all cost. Hospitality is a pre-Islamic phenomenon in *Pashtunwali*. The entrance of Pashtuns to the fold of Islam seems to have further reinforced this element of *Pashtunwali*. As mentioned above, Islam enjoins upon all Muslims to extend due honour and hospitality to their guests; however, very few ethnic groups/nations among the Muslim *Umma* abide by the injunctions of Islam as far as hospitality is concerned. One can safely say it is the inherent characteristics of Pashtuns only that follow the dictates of *Pashtunwali* as well as the injunctions of Islam as far as hospitality is concerned which has already been discussed in chapter 2 at length.

The Pashto proverbs and *Tappa* (folklore) have beautifully reflected the importance of a guest in *Pashtunwali* as under:

"Melma bewakhta pa cha rashee, laka akhtar che da roje pa gharma rashee"

English: When an un-wanted, unexpected guest comes to someone, it is just like the Eid coming after a half day fasting.

"Khaawenda tola mey threy zar kray

Da yar da kale milmana reghelee deena"

English: O, Lord! I would like to serve my heart to the guests who have come from the village of my lover.

"Che marhai Kama vee kor wala grama wa, che lamda kama vee melma grama wa."

English: When the bread is less, blame the wife, when the broth is less, blame the guest.[26]

3.3.4. Parda/Hijab System

Parda has become an identity symbol of the Muslims in general and the Pashtuns in particular. A woman, who doesn't veil or puts on a dress which ornamentally exhibits her body parts, is considered as immodest and indecent. Islam and *Pashtunwali* admonish the Muslim and Pashtun women to be veiled, introvert and keep themselves away from mingling with males. Allah says, "(O Prophet) enjoin the believing men to restrain their gaze and guard their modesty; and the believing woman to restrain their gaze and guard their modesty, and not to display their adornment except that which is displayed of itself, and to draw their veils over their bosoms, and not to

display their adornments except before their husbands, their fathers, .and also forbid them to stamp their feet on the ground lest their hidden ornaments should be displayed. (Surah Nur: 24:31)

The *Parda* of a Muslim and Pashtun woman is a part of modesty and modesty is the part of *Emman* (faith). The Messenger of God says:

"Modesty is a part of Emman and *Emman* is in paradise". (Tirmizi)

"Each religion has a morality and the morality of Islam is *Haya* (modesty)".

Abu Huraira (Allah be pleased with him) reported Allah's Messenger (may peace be upon him) as saying: It is not for a Muslim woman to travel a night's journey except when there is a *maharam* (a person whom she cannot marry) with her. (Muslim: 7:3104)

He further reports: It is not lawful for a woman who believes in Allah and the hereafter to undertake a day's journey except in the company of a *maharam.* (Muslim: 7:3105)

Wearing *Hijab/parda* is an attitude, a way of thinking and behaving that matters for the Muslims and Pashtuns. Strict *Parda* system in Islam and *Pashtunwali* has considerably contributed to the maintenance of social order in the tribal society. A Muslim woman can go out of her house in *Hijab* for a job or fulfilment of household needs, but a tribal woman has to stay within the four walls of her house until allowed by her family or accompanied by her *Maharam*, for she is the honour of a tribesman which he upholds safe at all cost.

It is worthy to mention that Islam and *Pashtunwali/Riwaj* adjure upon their menfolk to be modest and fair in dealing with women. Islam considers modesty as a part of faith and *Pashtunwali* takes it as a matter of honour whose trivial violation may lead to gruesome consequences.[27]

3.3.5. Kindness and forgiveness

Islam and *Pashtunwali* vehemently emphasize kindness and forgiveness. It reflects the greatness and splendour of a person to forgive the wrong-doer even if he can retaliate to take revenge from. Though *Pashtunwali* permits revenge proportionate to the harm done or injury inflicted, yet kindness and forgiveness are preferred. If a Pashtun wrong-doer repents over his mistake he gathers pirs, fakirs and elders of the tribe; enters the house of the victim and seek forgiveness. In case of murder, the family members of the perpetrator sit in the grave of the murdered and beg pardon. In most of the cases, the *Nanawate* is accepted and the guilt is forgiven.

Islam also allows *Qisas* for maintenance of social order and retribution of the oppressor; however, it gives a tiding of reward for the forgivers which is evident from the following verses of the Holy Quran:

"The repayment of a bad action is one equivalent to it. But if someone pardons and puts things right, his reward is with Allah. Certainly He does not love wrong-doers". (Surah Ash-Shura: 40).

“Verily, the Hour is coming, so forgive them with gracious forgiveness". (Al-Hijr: 15:85)

Jareer has reported from the Messenger of Allah, peace and blessings be upon him:

“He who is deprived of kindness is deprived of goodness.” (Sahih Muslim: 2592)

No doubt, it is difficult to behave appropriately in anger and grief, but the Muslims and the Pashtuns have the audacity to curb their anger and pardon the fiercest of their enemies. God says, "Believers are those who spend in charity during ease and hardship; and restrain their anger and pardon the people, for Allah loves the doers of good". (Surah Ali Imran 3:134).[28]

3.3.6. Brotherhood and love

Islam and *Pashtunwali* believe in brotherhood, love and affection. Brotherhood and love exist in a society where people share a common bloodline, socio-cultural norms and religious beliefs. Muslims and the Pashtun tribesmen fulfil this condition to a greater extent. A Muslim remains Muslim whatever creed and caste he belongs to, provided he believes that God is one; Muhammad (PBUH) is the Messenger of Allah; angels are the creature of God; Holy Quran is the Book of Allah; and that all human beings have to resurrect on the Day of Judgment. Similarly, a Pashtun remains Pashtun whatever religion, creed and caste he holds, provided he follows the dictates of *Pashtunwali* in letter and spirit. In Islam religious beliefs make the common bond for Islamic brotherhood; in *Pashtunwali* common bloodline and socio-cultural norms build brotherhood among the Pashtuns. As majority of the Pashtuns are Muslims; therefore, common religious beliefs have further strengthened brotherhood among the Pashtun tribesmen. It is also evident from the history of the Pashtuns that they would profess different ideologies,

yet they would remain brethren and would never fight among themselves on religious grounds. *Pashtunwali* urges Pashtuns to love and cooperate and never fall out among themselves, for if they are disunited they would destine to ruin. Brotherhood in Islam and *Pashtunwali* can be proved from the verses of the Holy Quran, Hadiths, Pashto proverbs and folklore as under:

“O, mankind! Surely we have created you of a male and female and make you tribes and families that you know each other, surely the noblest among you unto Allah is one who fears him .Lo! Allah is Knower Aware.” Al-Hujurat [49.13]

“And among His signs is the creation of the heavens and earth, and the variations in your languages, and your colours, verily in that are the signs for those who know”. Al-Rum [30:22]

“The believers are but brothers”. Al-Hujurat [49:10]

“The Muslims are like a single man. If the eye is afflicted, then the whole body is afflicted. If the head is afflicted, then the whole body is afflicted.”(Sahiḥ Muslim: 2586)

“The parable of the believers in their affection, mercy, and compassion for each other is that of a body. When any limb aches, the whole body reacts with sleeplessness and fever.”[29] **(**Bukharī: 5665)

The Pashto proverbs also reflect the concept of brotherhood and love in Pashtunwali as under:

"Che Nasoona ye Gokhi vee, nayatoona ye Gokhi vee"

English: When men cease to eat together, they fall out.

“Wrori ba kawu kho hesab tar menza”.

English: Brotherhood is all very well, but my bow has a definite price.

"Da ywa Swara ba sa doorha vee"

English: One horseman does not raise a dust cloud.

Or one swallow makes not a spring, nor one woodcock a winter.[30]

3.3.7. Self-respect and respect of others

Self-respect means a pride or confidence one possesses in oneself. It's a feeling that one is behaving with honour and dignity. It is true that self-respect is a human need. If a man has self-respect he has confidence in himself. He possesses the valuable qualities of honesty and integrity. However, self-respect should not be confused with arrogance, for Islam and *Pashtunwali* prohibit arrogance and promote love and affection. Besides, every individual desires to have affection, self-respect and recognition in the society; therefore, the Muslims and the Pashtuns never compromise on their self-esteem. They believe that men are equals and have been created of the same clay. They also believe that Allah is the Creator of earth, heaven, the entire universe, all creatures and things therein. They put their trust in God and perceive honour and humiliation in the Hands of God. Islam and *Pashtunwali* also enjoin upon their followers to bear good manners. In this connection, Islam and *Pashtunwali* have greatly emphasized on the respect of others, for it is here that one can win self-respect and hearts of other people. Islam adjures the believers to respect your elders and be kind to your youngsters. On the other hand, the respect of elders and women is the hallmark of a Pashtun society

which is evident from their social norms and values. A young Pashtun will stand on his feet until the elder permits him to sit and will stand up if the elder stands up. The youngsters will wait for their turn on a supper until the elders fill their stomach and allow the youngsters to avail their turn. Similarly, a Pashtun tribesman would respect all women and would treat them as their sisters, daughters and mothers depending on the age factor. As far as self-respect is concerned, a tribesman can compromise on any loss he incurs but cannot bear the loss of self-respect which he earns in the tribe during the span of his life. Muslims and the Pashtun tribesmen believe in the concept of co-existence and mutual respect which is portrayed in the following verses of Quran, the Holy Prophet and Pashto proverbs:

“Verily, We created man of the best stature (mould)” (Quran: 95:4)

He said, "I am better than him. You created me from fire and created him from clay."(Quran: 38:76)

Abu Huraira has reported that the Holy Prophet said:

“Faith (belief) consists of more than sixty branches (i.e. parts). And *Haya* (This term “*Haya*” covers a large number of concepts which are to be taken together: among them are self-respect, modesty, bashfulness, and scruple etc.) is a part of faith”.[31] (SahihBukhari: 09)

“When an elder of a community comes to you, pay him due respect”.

"Respect your elders and be kind to your youngsters".[32]

"*Ka ta wayal che za yam aw ma wayal che za yam, na ba ta yee aw na ba za yam."*

English: If each of us say 'I am', neither you will remain nor I.

"*Adab la bey adaba zda kegi"*

English: Manners can be learnt from the manner-less.

"Izat kawa Izat ba de kegi"

English: Respect others, you would be respected.[33]

3.3.8. Compassion and evil fighting

Islam promotes peace and harmony and shuns violence. Islam admonishes its followers to do good deeds and fight against evils and wrong-doers. Therefore, a Muslim and a Pashtun tribesman must have the spirit of compassion and the courage of fighting against evils. They must be righteous as well as tender-hearted. It is obligatory upon the believers to take punitive action against the evil-doer (if Muslim); if not, ask him verbally to abstain from the evil; if not, he must offend it in his heart which is the fraction of faith he holds. However, Islam doesn't allow coercion in religion and allows the non-believers to live by the faith and values they believe in. Similarly, *Pashtunwali* portrays love and compassion for humanity. The Pashtun tribesmen have the audacity to take action against the evil being committed in his vicinity, for he thinks the evil can enter his home to affect his entire family life. *Cheegha*, *Mlatarh* and raising *Lashkar* against the wrong-doers are the best practices of *Riwaj* which tribesmen have adopted for punitive actions.

Nonetheless, the tribesmen believe in the freedom of religion and creed - means religious pluralism.

The significance of compassion and evil fighting in Islam and *Pashtunwali* has been highlighted in the verses of the Holy Quran and the Pashto proverbs as under:

“O You who believe! Enter absolutely into peace (Islam). Do not follow in the footsteps of Satan. He is an outright enemy to you.” (Quran: 2:208).

"Indeed, Allah enjoins justice, and the doing of good to others; and giving like kindred; and forbids indecency and manifest evils and wrongful transgression. He admonished you that you may take heed”. (Quran: 16:91)

“There is no compulsion in the system *(Deen*); the proper way has been clarified from the wrong way. Whoever rejects evil, and believes in Allah, indeed he has taken grasp of the strongest hold that will never break. Allah is Hearer, Knower.” (Quran: 2:256)

God loves His mankind and enjoins upon the believers to be compassionate to others, for everything is going to return towards Him and he who does good is successful in life. Allah narrates in Quran:

"O ye people fear of the Lord, Who created you from a single soul and created there from its mate, and from them twain spread many men and women; and fear Allah in Whose name you appeal to one-another, and be mindful of your duty to Allah particularly respecting ties of relationship. Verily, Allah watches over you”.[34] (Quran: 4:2)

"Che zar safa vee, ore na ye sa bak vee".

English: The earth says, "If you are not a criminal don't fear of me) or A pure gold is not affected by the heat of fire.

"Khapal amaal de lare maal"

English: A man's actions are his companions.

"Da bade khabare sal kala umer vee".

English: Bad words live for hundred years.

"Kha khovee badey sultan kri au bad khovee badey hairan kree"

English: Good behaviour will make you a kind, bad conduct will make you worry.[35]

3.3.9. Truthfulness and promise

Islam and *Pashtunwali* also enjoin upon their followers to be truthful, upright and keep promises. A person who is not truthful has no place in Islamic as well as Pashtun societies. He loses his credibility among the people. He is avoided and looked down upon. Literally, truthfulness means to protect or keep. Its opposite is betrayal or treason. If a person fails to keep or protect anything left with, he doesn't remain truthful.

The Holy Quran says, "Oh you who believe! Fear Allah and be with those who are truthful". (9:119).

Truthfulness enhances integrity, trustworthiness and vehemence in character. It embodies honesty and fair dealing among the believers. The Holy Quran mentions:

"Verily, God does command you to render back your Trusts to whom they are due".[36] (4:58)

Truthfulness also entails a believer to fulfil commitment, promises and covenants, if made. The Holy Quran says, "O you who believe! Fulfil the obligations". (5:1).

“And fulfil the promise, surely (every) promise shall be questioned about”.[37] (17:34)

The following Pashto proverbs highlight the importance of trustworthiness and promise in *Pashtunwali:*

"Che Rakhtia razi darogho ba kali rhang vee"

English: By the time truth is known, lies will have destroyed the village or (If the truth comes out, the land of lies will be burnt up).

"Che Rakhtia wayam bia ma wahe"

English: If i speak the truth i know you'll beat me.

"Daroghjan au lafajan wroona dee"

English: A boaster and a liar are cousins.[38]

3.3.10. Dispute resolution mechanism of Sharia

Riwaj has provided a space to *Islamic Sharia* for settlement of disputes among the Pashtun tribesmen. They resolve their disputes either through Jirga in accordance with local *Riwaj* or *Islamic Sharia*, which has no parallel in other parts of the Islamic world. Both *Riwaj* and *Islamic Sharia* provide a cheap and speedy justice at the doorstep to the tribesmen. The procedure of adjudication in *Riwaj* and *Sharia* has already been discussed in chapter one at length.

The commonalities between Islam and *Pashtunwali*, as described above, rightly portray that they are two sides of

the same picture. They have convergence in most of their practices with certain exceptions where they diverge and repulse each other. In fact, they have reinforced each other which have far-reaching impacts on the behaviour of the Pashtuns. Here the Pashtuns are hapless in the sense that they keep adherence to the injunctions of Islam as well as the cults of *Pashtunwali* while Muslims other than Pashtuns lead their lives in accordance with the principles of Islam only. A Muslim, who is secular in nature, has no problem staying in the Muslim society, but a Pashtun has no choice to avoid *Pashtunwali*, for if he does so, he doesn't remain a Pashtun. He may be secular or *Mullah* but his secularism or Islamism must not affect his Pashto (here Pashto means *Pashtunwali)*.

It must be mentioned here that strict adherence to *Pashtunwali* among the urban Pashtuns has been affected by their socio-economic growth and development. They have adapted themselves to the prevailing social fabric of the global world in their respective urban social set up and have little regard for the Pashtun's code of conducts in the strict sense of a word. However, *Riwaj* and *Pashtunwali* have strong roots in the rural areas of Khyber Pakhtunkhwa and Afghanistan in general and the tribal areas of Pakistan in particular.

The reasons of the rigidity and extreme love for *Pashtunwali* and *Riwaj* especially among the tribesmen seem to be due to certain factors which need to be narrated here. To be a realist, a tribesman is rigid in behaviour due to the geographical and climatic conditions he lives in. He has been isolated by the un-surmounting hills from the vast and fertile plains of the Gandhara

region which experienced the exposures of many great civilizations. This aloofness of the tribesmen by high peak mountains and ridges made them hard and tough to handle with. They are said to have been panthers and wolves, which is true because they live in the invincible terrains of Koh-e-safid and Koh-e-Sulimanlike panthers and wolves live in. They become bandits and dacoits, not because they are born thieves, but because they hate begging and love to snatch their fortunes as panthers and wolves do. They are true believers not because religion has influenced their behaviours, but because they are simple, upright and committed to their cause. They do whatever they speak and speak whatever they think. [39] The story of a young man who lived in the *Khaisore* village of the Mir Ali Tehsil bordering with the Mahsud area of the South Waziristan truly depicts the religiosity of the tribesmen. He was asked by a teacher in the School about the name of the Holy Prophet (PBUH). He replied that previously Hajji Mir Zali khan alias Fakir of Ipi was the Prophet, now he does not know who he is? This reveals the level of simplicity and religious tendency that exists in the youths of the tribal areas. I must disclose here that majority among the tribesmen don't know the meaning of the first *kalmaTayaba*, let alone the other teachings of Islam, which a Muslim needs to embody in his person. I absolutely disagree with the conception that religious affinity has turned the Pashtun tribesmen extremists and intolerant towards other religions and social values. In fact, it is the Pashtun code of conducts, usages and customs that have made them rigid and rock.

Roshan Shah Qalamyar has comprehensively discussed and pointed out the factors leading to the extremist propensity among the Pashtuns in his book, "*Pashtun aur Askariat pasandi – Asbab-o-Hal*". This book is in Urdu language. The author may not be able enough to portray the real message of the writer being translated; however, effort has been made to convey his message in a subtle manner. He states that Pashtun is the mixture of multifarious characteristics. He is hard like a rock, intolerant, quarrelsome, blunt and rigid on the one hand and mild, soft-spoken, well-behaved and secular on the other. He is the combination of two extremes–good and bad. If he is good he is God-incarnate on the earth and the saviour of the humanity. He is the friend of friends and goes to the extreme end of laying down his life in friendship. Nevertheless, if one sees the other aspect of his person he is a devil-incarnate and doesn't spare his closest kin to live in peace. He refers to Ghani Khan and mentions that a Pashtun would always fight with his brethren but he doesn't like to be a soldier. He is passionate, hard-tempered and poor indeed, but arrogant as well. He kills the lover of his daughter, but he sings to the glory of love. He doesn't know fear and embraces death; therefore, he dies ahead of time. He always strives to impose his ideas on others through gun point and never scare to be hanged for. He further contends that every Pashtun pretends to be Alexander, the Great and desires to be recognized as such; hence, no one accepts each other's' superiority even if they are close kindred. He chooses to die rather surrender before others.[40] Roshan Shah Qalamyar also refers to Syed

Rasool Rasa's book, "*Muqadma Armaghan-e-Khushal",* wherein the character of a Pashtun has been attributed as the mixture of opposites. He mentions that a Pashtun embodies in his person extravagance, unnecessary individualism, absurd extremist feelings and the evil of hard animosity. He is ardent, impatient and flares up at once; and if angry he commits murder for no reason and spoils his life, wealth and entire family. He takes pride in downing his brother, considers his second cousin as enemy and spends his life in fighting with. He perceives everything fair in friendship and enmity. He is stone-hearted and doesn't shy to tyrannize others.[41]

The extremism of a Pashtun is conspicuous in his social customs and religious rites. The arrival of a newly born baby is welcome with gunfire so as to protect him from the witchcraft of the jinn and monster. A pilgrim is received in the presence of heavy firing and a wedding-horse is spearheaded by gunners leaving stray bullets in the air. Besides, the Pashtuns are brave, chivalrous and jingoists. They love their heroes as well as heroes and warriors of other nations; therefore, they name their babies as Khushal Khan, Aimal Khan, Mir Wais, Sher Shah and Ahmad Shah as well as Saddam, Osama, Chengiz Khan etc. Similarly, Pashtuns love to eat meat of animals and birds–means they are carnivorous; therefore, they have aggressive predilection. They hold the names of carnivorous animals such as *Sher khan* (tiger khan), *Shehbaz* (eagle) and *Zamaray* (lion) etc. In fact, parents of the Pashtun's child aspire to have the qualities of these legends and animals in their children. They would never like their children tend to the traits of jackal and sheep–

animals known in folklore to be coward and indolent respectively. The obsession of holding frightening names is common among the parents as well as the literary figures of the Pashtuns. The Pashtun literary figures hold novel soubriquets such as Syed Akram Shah *Atish* (scorching fire), Abdul Sattar Bambar, Mohammad Yousaf *Tandar* (thunder), Sikandar Khan *Khunraiz* (blood-thirsty) etc. which signify the existence of extremist proclivity among the Pashtuns. The names of Pashto movies such as *Topak Zuma Qanoon* (gun is my law), Halako Khan, *Da Topak Zuba* (Gun's language), *Jung* (War) and *Da Pakhtun Tora* (Sword of the Pashtun) etc. also depict the rigidity and extremism of Pashtun culture and his love for horror, gun and fighting.[42]

In addition, Pashto's language has abundance of proverbs, adages and folklore which reflect extremism and rigidity in their social customs on the basis of which social norms and taboos have been developed. The following proverbs and folklore have been chosen here which can rightly help us understand the belligerence of the Pashtuns:

"Parde jung nim akhtarvee"

English: Hearing others quarrel is nearly as exciting as Eid.

"Pakhtun na de che da nook zawab pa sok nawar kavee"

English: He is not a Pakhtun who doesn't strike a blow if pinched.

"Dushman da kor spay wazalay kha de".

English: Even the enemy's dog shouldn't be spared.

"Pa salo ter shee hala ba shers hee"

English: One becomes a lion after taking hundreds of pains.

"Tarbore de khar vee laata pre ma arha va".

English: Even if your cousin be a donkey, don't ride him.

"Mar wajalai kha da, Tarbore wahalai kha de".

English: It is better to kill a snake and humble the tarbore, cousin.

"Teega ka mazboota da zoor pa makh ke hessa na da"

English: A rock is stiff to break but can't stand against a force.

"Laas de khalas tora de terra"

English: your hands are free to use your sharpened sword.

"Kagha khula pa sok mathegi"

English: A crooked mouth can be set right with a punch.

"Bangharhi jinakai pa laas ka vee hathkarhai halakan"

English: Bangles are for women and manacles for men.

"Berta pa zawand pa matay nazam

Ya ba pra marh sham ya ba khapal karham midanoona"

English: I'll never retreat, either I'll die or win the battle).

"Pa speen midan ba darsara yam

Za pukhtana la toroonatakhtam mayana"

English: I'll not abandon you in the battlefield because a Pashtun woman knows how to fight with a sword in the battle.)

"Sok wa nakhali la ghaleem aintikam

Mard na khob ka, na khwarak ka na araam"

English: A brave man doesn't eat, sleep and takes rest until he takes revenge from his enemy. [43]

In this backdrop, one can rightly differ with the concept that Pashtuns are rigid due to their religious affinity with Islam. Perhaps rigidity in Pashtun's character exists due to rockiness of the Pashtun's code of conducts. His life begins with *Nung* and ends with *Nung*. He lives to uphold his honour, the honour of his family, tribe and the motherland. He kills the one who defiles his *Nung* and *Namoos* and can be killed for. He is an extremist in friendship as well as enmity. He is proud to be first a Pashtun and then a Muslim. He loves Islam and lays down his life for but he resorts to religion where *Pashtunwali* doesn't provide solution to his problems. That's why his Islam and *Pashtunwali* have always been exploited by his enemy which is a second thought for the Pashtun elders.

3.4. Distinctions between Islam and Riwaj

If commonalities in *Riwaj* and Islam lead to the conception that Pashtun tribesmen are rigid and fanatics due to their religious affinity with Islam, then the distinctions there between cause a misconception that *Riwaj* is deadly against Islam, thereby Pashto is a partial infidelity. This section throws light on this misconception to prove that, albeit, the Pashtun tribesmen are staunch Muslims, yet their Islam has been influenced by *Pashtunwali* which is evident from the following Pashto-driven and un-Islamic practices adopted by the Pashtuns.

3.4.1. Tribalism

Islam has no place for tribalism and nationalism. Islam considers the believers as a single community (*Umma*) and any distinction, if exists, depends upon the deeds of the believers. They are all the descendants of Adam having no superiority and inferiority on the basis of creed, caste and tribes. The Holy Quran and the Hadiths of the Prophet (PBUH) have rightly postulated the concept of tribalism and nationalism as:

"O mankind verily, We have created you from a male and a female, and made you peoples and tribes, so that you may recognize each other. Verily, the most honoured of you to Allah is (he who) safeguards himself against evil with full awareness of Divine Laws. Verily, Allah is All-Knowing, All-Aware." (Quran: 49: 13)

"O you who believe! Fear Allah as He should be feared and die not except in a state of Islam with complete submission to Allah. And hold fast, all of you together, to the rope of Allah (i.e. Qur'an), and be not divided among yourselves; and remember with gratitude Allah's favours on you; for you were enemies and He joined your hearts in love, so that by His Grace you became brothers; and you were on the brink of the pit of fire, and He saved you from it. Thus Allah make His signs clear to you that you may be guided." (Quran: 3:102-103)

Abu Daud and Tirmidhi have reported that the Messenger of Allah (PBUH) said, "Undoubtedly Allah has removed from you the pride of arrogance of the age of *Jahilliyah* (ignorance) and the glorification of ancestors. Now people are of two kinds – either believers who are aware or transgressors who do wrong. You are all the children of Adam and Adam was made of clay. People should give

up their pride in nations because that is a coal from the coals of hellfire. If they do not give this up, Allah will consider them lower than the lowly worm, which pushes itself through *Khara* (dung)." [44]

On the contrary, the Pashtun society is the conglomeration of various tribes that has divided the society on the bases of blood line-age. Each tribe has a distinctive character and feels to be superior to the other on account of its ancestry, chivalry and physical strength. Each tribe glorifies its ancestors and each tribesman lays down his life for it. Each tribe is then divided into *khels* and *khels* into *Plarina* (family). Each tribe has occupational groups such as *Dhum* (drum-beater), *Kulal* (potter), *Zargar* (jeweller) and *Trakanrh* (carpenter) etc. who are considered as low-caste and are looked down upon by the Pashtuns (here Pashtun refers to a person who does not belong to the occupational groups). Islamic injunctions, however, envisage avoidance of arrogance in caste and tribalism but tribesmen practice it as well as take pride in it which is contrary to Islam.[45]

3.4.2. Honour killings

In *Pashtunwali* family honour is associated with the *Nung* of men and *Namoos* of women. Both man and woman are killed in the cases of rape and elopement and have no revenge. A woman cannot dream of merry-making and love, let alone illicit relation in sheer violation of Pashtun's *Riwaj*. If she does so, she knows she is destined to die. Similarly, a man can dream of his love only, for he knows the consequences of his love affairs. He can fantasise his dream girl walking through the nearby path of her house

but he cannot meet and talk to his love because, he thinks, he will be gunned down.[46]

Honour killing in *Pashtunwali* is perceived to have been derived from Islamic Sharia. In fact, honour killing is purely a social norm adopted by the Pashtuns. We cannot find any traces of the horrific act of honour killing in Islam. Islam is a religion of peace and love and provides protection to all inmates irrespective of religion, race, creed, caste and ethnicity. The Holy Quran and the Hadiths of the Holy Prophet have denounced honour killings as:

"Whoever kills a believer intentionally, their reward will be Hell, to abide therein forever, and the wrath and the curse of Allah are upon them, and a dreadful penalty is prepared for them." (Quran: 4:93)

"On that account: We ordained for the Children of Israel that if anyone kills a person – unless it be for murder or for spreading mischief in the land – it would be as if they killed all people. And if anyone saved a life, it would be as if they saved the life of all people.*"*(Quran: 5:32)

"It is not permissible to shed the blood of a Muslim who bears witness that there is no god but Allah and that I am the Messenger of Allah except in three cases: a life for a life (murder), *Zina* of one who is previously married (adultery), and the one who changes his religion and forsakes the *jamaa'ah* (community)." (Bukhari)

The despicable practice of honour killing used to exist in the pagan Arab society before the Islamic revolution in the 7th century. They would bury their daughters alive due to fear of economic burden as well as social disgrace in

the inter-tribal wars if they would come under the captivity of their enemies. Islam discontinued this abominable act of female infanticide and gave equal status to women in the society. The Islamic concept of honour killing may easily be comprehended from the false accusation of adultery made against Hazrat Ayesha by the enemy of Islam. The Holy Quran absolved her of the accusation and ordained to produce four witnesses in adultery and fornication cases which is in fact a difficult job.[47]Perhaps the main purpose of this commandment was to avert the curse of false accusation of adultery against women.

This reveals that honour killing has been falsely associated with Islam. It is a social issue based on customary laws that exists in the Pashtun society before their conversion to Islam. It's absolutely un-Islamic if man and woman are killed on the basis of allegation without due process of law *(Riwaj).* It must be admitted that the curse of honour killing exists among the Pashtuns as well as other societies across the world in different forms and manifestations.

3.4.3. Division of inherited assets

Islam and *Pashtunwali* diverge on the division of assets between males and females. Islam has expressively set a comprehensive formula of assets division among the family members in the verse of the Holy Quran where the share of a male has been shown as equivalent to that of two females in the first instance. “Allah commands you regarding your children for the male a share equivalent to that of two females." (Quran 4:11). If the females are more than two, then the formula changes accordingly

about which the Quran mentions, “If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half."(Quran 4:11). The Holy Quran has given a long list of relatives and their share in the inherited property.[48]

On the contrary, the females among the Pashtun tribesmen have no right to have their shares in the inherited property. Here is a male dominated society wherein more land and more males are the medium of power and wealth and females are considered as the honour of the family. Nevertheless, the males have equal share in all moveable and immoveable assets in accordance with the Islamic Sharia and cannot be discriminated. It is also a practice in vogue that a father bequeaths a quantum of land in favour of his favourite son which is acceptable to his entire family. Also it has been noticed that the younger brothers yield in to allocate more land or apportion more assets to their elder brother on the ground that he has been their bread-earner and has taken more pains in life for their livelihood.

As said earlier, females have no share in the moveable and immoveable properties except the mother, if widowed. She gets share in her husband’s wealth and property for subsistence, as specified by the *jirga* members in accordance with the prevailing conditions. A mother has always been the custodian of family accounts in the Pashtun society. She rules the roost in the family and influences the decision of her husband in his lifetime, even after she becomes a widow. However, a great social change that has been observed in the tribal life is the weakening of mother's hold on the family affairs which

has tremendously affected the social fabric of the Pashtun tribes. Perhaps the allocation of a chunk of land or grant of subsistence allowance to a mother is due to the *paighore* of the *tarbore* rather than the acceptance of her share in the inherited property.[49]

This diversity in the division of inherited assets between Islam and *Pashtunwali* has led to the misconception that Pashto is a partial infidelity.

3.4.4. Consent of woman in marriage

Islam and *Riwaj* diverge conspicuously when it comes to a choice of woman in marriage. Islam views marriage as a socio-religious contract that requires the free consent of both the partners. No doubt, the parents and guardians may render advice to their children for choosing a partner or can persuade them for a particular partner but they cannot force them to marry without their choice. Islam allows women to exercise their free consent of marriage as Quran says that there is no coercion in religion. The Islamic concept of non-compulsion in religion is equally applicable in all social and religious matters, which is proved from the following verses of Quran and Hadiths of the Holy Prophet (SM).

"O you who believe! You are forbidden to inherit women their will. Nor should you treat them with harshness." (Quran: 4:19)

Abu Hurairah reported the Prophet as saying, "A woman who has been previously married shouldn't be remarried until her permission is asked nor should a virgin be married without her permission. They (the people) asked,

what is her permission, Apostle of God? He replied, it is by her keeping silence". (Sunan Abi Dawood: 11:2087)

Abdullah ibn Abbas narrated: A virgin came to the Prophet and mentioned that her father had married her against her will, so the Prophet allowed her to exercise her choice".[50](Sunnan Abi Dawood: 11: 2091)

On the contrary, *Riwaj* doesn't permit woman's consent in marriage. A Pashtun tribeswoman can't express her choice of marriage, let alone love-making in the *khe*l – an act which involves death and destruction. She desires to be wedded or not, she becomes a victim of arranged marriage within the family or gets married to a man whom she doesn't know even. She may like her partner or not, she spends her life with. In fact, a Pashtun woman tolerates all odds of life with a smile on her cheeks apparently because she has to keep the honour of her family at the cost of slaying her aspirations and happy dreams. However, *Riwaj* doesn't bar the tribesman to express his choice of marriage. He can marry a girl of his choice, provided it doesn't defile his family's honour.

Similarly, Islam permits widow/divorcee to remarry whosoever she wants to while *Riwaj* doesn't permit remarriage of a widow/divorcee with her free consent. In *Riwaj* a widow can remarry first to her husband's brother; if no one marries her among her husband's brothers she can marry to his cousin; if cousin is not available, then she can marry to any close relative of her husband with the permission of her in-laws. Nevertheless, a Pashtun woman avoids remarriage and prefers to look after her

children for the rest of her life. She lives for her children instead of herself.

There is a noticeable distinction between Islam and *Riwaj* on the consent of woman in marriage which seems to be quite un-Islamic. However, it doesn't mean that one should be called a *kafir* because he doesn't permit his woman to fall in love and marry on her free will. In all cultures of the world including the West, parents would like to marry their daughters in accordance with their choice; however, some customary laws might be rigid to accept the free consent of woman in marriage while others might be liberal and flexible to accede to the norm of free will. Generally, it has been noticed that a society where liberty of free will in marriage exists, the marriage institution gets failed and confronts many social problems.[51]

3.4.5. Firing in front of girl's house for marriage (Zagh/Ghug)

Firing in front of a girl's house by a tribesman for marriage is another obnoxious act in *Riwaj* which leads to the concept that a Pashtun is one moment a saint, and another a devil. Seldom has it happened in the tribal society that a tribesman likes/loves a girl and attempts to marry her. He sends the *Nanawate* of his elders to her house and seeks her hand in marriage but he doesn't succeed. The folks of the *khel* get apprised that the tribesman had sent *Nanawate* to the house of his *tarbore/folkman* seeking the hand of his daughter/sister in marriage which has been refused. It becomes a matter of honour and *paighore* which constrains him to take an

undesired action of opening fire in front of the girl's house announcing that she will be sitting in his name and will not be married by anyone except him which has come to be called as *Zagh/Ghug*. The parents of the girl would like to wed her, but the people of the *khel* avert to take the risk of wedding such a girl. Sometimes, it takes ugly course in Riwaj. The brother of the girl retaliates and fires in return making announcement *(Zagh)* that the sister of his *tarbore* (who had fired initially) would sit in his name and couldn't be married. In case, the tribesman agrees to the marriage proposal as a result of tireless efforts of the boy's family, the elders of the *Nanawate* accept the demand of the girl's family for dowry even if it is against the prevailing *Riwaj*, for it is here that *Riwaj* was violated by the impassionate boy in the first instance.

This cruel and unethical step of the tribesman spoils the future of the girl which is absolutely un-Islamic, for Islam permits to know the choice of a woman for marriage which has already been discussed in detail in the preceding section. Generally, it has been noticed that the stronger in the *khel* or the relative of the girl resorts to such disgusting act. As the basic philosophy of *Riwaj* is the maintenance of peace and social order; therefore, it has become an acceptable social norm.[52]

Zagh/Ghug has other connotations also. If a tribesman denies one's right in any moveable or immoveable property and publicly declares that the claimant has no right with, even then if he claims he'll get it over his dead body. This wicked act of the tribesman receives wide public condemnation; however, the elders of the *khel* endeavour to resolve the dispute amicably through local

jirga. If the *jirga* fails to settle the dispute, it leads to enmity between the tribesmen and continues for decades. *Zagh* also refers to the announcement when a tribesman kills a man at night or in a cagey manner to be identified. After reaching home he fires three shots in the air and announces the revenge of murder or act due to which his honour was defiled. Sometimes, an assassin kills a man but its announcement *(Zagh)* is made by the real enemy of the murdered. Here the Pashtuns leave the assassin untouched and go against the mastermind. Though it is a socially acceptable norm in *Riwaj*, yet it is in conflict with the injunctions of Islam.

3.4.6. Friends' agreement for marriage of their children

The friendship of a Pashtun tribesman is an admitted fact. A Pashtun tribesman can put his life at stake and jumps into hot water if he finds his friend therein. This sense of friendship among the tribesmen has led to the loathsome social practice of making an oral agreement of marrying one's daughter to his friend's son before birth or during childhood. It has been observed however that this practice has usually caused conflicts between the friends when their children grow old to be married. In fact, Islam doesn't inhibit early marriage, but marriage of children before birth or during childhood has no place in Islam. It is purely a social custom among the tribesmen, which is un-Islamic indeed and fortifies the concept of Pashto being partial infidelity.[53]

3.4.7. Divorce in Riwaj and Islam

The divorce of a woman without tangible reasons in a tribal society draws wide condemnation as it tantamount to the humiliation of both the families. No sensible and honourable tribesman would like to divorce his wife until she becomes incorrigible, converts his life into a hell and may no more be a better half to live with. Every tribesman has a strong marital bond with his partner, not because he loves his wife but because he knows that the woman is created out of twisted ribs and can make his life troublesome. It also needs to mention that the *Riwaj* of reciprocation in marriage, i.e. a marriage of a sister/brother of one family with a brother/sister of another family, also bars frequent divorce in tribal areas. The tribesman knows if he divorces his wife, his sister will also be divorced in return thereof. Further, he feels ashamed and dishonoured if his divorced wife remarries and becomes a wife of another tribesman in the vicinity. Therefore, divorce happens very off and on in the tribal society.[54] Similarly, Islam pays great importance to the stability and the strength of marital ties between the two spouses. Divorce is the last resort to an unsuccessful marriage. Marriage is one of Allah's graces; however, Islam permits divorce if the husband knows he can't spend harmonious life with his wife and needs to be separated willingly.[55]

Besides, there also exists a difference in the procedure of divorce between *Riwaj* and Islam. In *Riwaj,* divorce is announced thrice in one go, while Islam urges the Muslims to announce it in three stages so that they may

have a chance to reconcile if they want so. The Quran says, “O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality. And those are the limits [set by] Allah. And he, who transgresses the limits of Allah, has certainly wronged himself. You know not; perhaps Allah will bring about after that a [different] matter.” (65: 1)

“And those who no longer expect menstruation among your women - if you doubt, then their period is three months, and [also for] those who have not menstruated. And for those who are pregnant, their term is until they give birth. And whoever fears Allah - He will make for him of his matter ease”.[56] (Quran: 65:4)

Besides, a woman can seek *Khula,* divorce from her husband in *Islamic Sharia,* provided she has valid reasons. Therefore, Islam dislikes *Khula* of a woman without specific reasons.

The Holy Prophet says, “A woman, who seeks *Khula* without legitimate reason, will not smell the fragrance of paradise.” (Sunnan Abi Dawood: 12:2218).

A Muslim woman may file a petition with *Qazi* to grant her divorce in case of refusal by her husband. The waiting period *(iddaht)* of a woman is one menstrual cycle or one month if she is post-menopausal, i.e. ceased menstruating to ensure she is not pregnant. If the woman is pregnant, then the waiting period is until she gives birth

to a child.[57] However, *Khula* has no place in *Riwaj.* A Pashtun woman has no right to seek divorce from her husband. If she aspires for *Khula* she can persuade her in-laws or can make a hell of the house to make it home to the family that she can no more stay in this house. She can express her feelings for *Khula* among the womenfolk of the family but she cannot cry in the open for it**.**

Sometimes, a Muslim divorces his wife alleging that she had committed adultery. He fails to bring four witnesses against her. She also denies the allegation. In such a divorce *(Li'aan),* the husband "swears four times that his accusation is true, followed by a fifth oath in which he invokes the wrath of God upon himself if he is lying". The wife neutralizes his claim by responding with four oaths of her own, the fifth of which calls upon her the wrath of God if her husband is telling the truth. If she refuses to take the oath, she is presumed to be guilty and subject to the punishment of adultery.[58] In *Riwaj,* it is altogether different. If a woman is accused of adultery, she meets a fatal destiny of death. She has no right to defend herself if the accusation has become public and the news roam around the *khel*. Here the wrath of the tribesman prevails over the *Riwaj* of *Jirga* to settle the issue of adultery amicably. *Riwaj* has assumed harder stance on the issue of divorce, yet it does not make someone a *kafir* (non-believer).

3.4.8. Selling of woman in marriage

The selling of women in marriage by the tribesmen has also ascribed to the concept of Pashto being partial infidelity. Instead of giving share in property, her parents

receive hard cash in lieu of her marriage *(walwar)* which they spend to alleviate their own poverty. Some parents spend the dowry amount on the purchase of belongings of the bride which she carries with to the house of her husband. Besides, women are married for money to aged men or out of the tribe to such a remote area that she never comes back in years and years to see her kinsmen in her parental family. The jewellery, which she receives from her husband in dowry, is taken back after marriage so that it can be used in the marriage of her brother in-law. One important point needs to be kept in mind about the dowry after divorce. The Pashtun tribesmen don't maintain *Nikah Nama*; thereby don't have formal record of dowry to be claimed by women after divorce. It always remains a source of dispute among the tribesmen. However, the dispute of dowry after divorce is usually resolved in accordance with *Islamic Sharia*.[59]

On the contrary, Islam has provided the right of dowry to a woman in accordance with the agreed upon compensation paid by her husband. The dowry consists of compensation paid before she gets knotted to her husband and the compensation which her husband pays after she enters into the marriage institution. The amount of dowry is entered in her *Nikah Nama*.The Islamic jurisprudence envisages two prominent factors that determine the dowry of a woman after divorce - one, who ask first for divorce and two, the virginity of the wife. If the husband asks for divorce before spoiling her virginity, he pays full dowry; if he asks for divorce while her wife is still virgin, he pays half of the dowry. If the wife asks for divorce after losing her virginity, the husband pays half of

the dowry; and if the wife asks for divorce while still virgin, then no dowry is required to be paid out by the husband. In addition, other financial obligations such as availability of kids, their ages and property under joint ownership are taken into consideration depending on the length of marriage.

Allah says in the Qur'an: "And give the women their dowries with a good heart..." (Quran:4:4)

"So for that pleasure, which you have enjoyed from them, give them their prescribed compensation". [60] (Quran: 4:24)

3.4.9. Swara/Neka (Compensation)

Swara, a detestable social practice that exists among the Pashtuns since long, has also attributed to the misconception of *Pashto nim kufar da*. *Swara* is an absolutely un-Islamic practice but seldom has it happened to maintain social order in the society. Literally, *Swara* means a woman on a horse or camel back. It happens when an enemy surrenders and sends *Nanawate* of pirs, fakirs and elders of the tribe to his enemy's house and beseeches his forgiveness. The *jirgamar*, sometimes on the demand of the forgiver or by their own, decide to give a woman in the family of the pardon-seeker in marriage to the son or brother of the forgiver with the intent of melting the heart of the latter to accept the *Nanawate* and forgive his enemy. Usually the woman is wedded to an aged or a youngster just to malign the enemy. It is also taken for granted by the forgiver as an open surrender of his enemy and acceptance of his superiority. However, it makes the life

of the woman not less than a hell where she has to live the rest of her life. She has no place in her enemy's house, though she becomes the honour of that family. She always listens to the *paighore* of her in-laws and leads a disgraceful life. Nevertheless, she has to bear all afflictions with a heavy heart for the sake of her family.[61]

The practice of *Swara* is quite obnoxious no doubt, but its purpose is to settle the enmity, avert further bloodshed and convert the enmity into blood-relation. Whatever purpose the Riwaj of *Swara* serves, the tribesmen perceive the cold blood murder as breaking of *Hudd* (Bone) that never heals. In fact, *Swara* has no place in Islam as well as today's global village; therefore, it has been banned by the government of Pakistan under Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011, (Section 310 PPC).[62]It must be admitted that the practice of *Swara* has considerably diminished in the tribal society also.

3.4.10. Usury in the Tribal areas

The Pashtun tribesmen seem to have left the Jews behind in the field of usury based businesses. Usury is so rampant in the tribal areas that one can safely presume that the origin of Pashtuns has rightly been connected to the lost tribe of Israel. No doubt, interest-bearing businesses do operate in the business world but lending hard cash on the basis of usury is a practice in vogue among the tribesmen only. On the other hand, Islam has strictly prohibited usury and has called it a war against God. Quran mentions, "Those who consume interest cannot stand on the Day of Resurrection except as one

stands who is being beaten by Satan into insanity. That is because they say; trade is just like interest. But Allah has permitted trade and has forbidden interest. So whosoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whosoever returns to dealing in interest or usury - those are the companions of the Fire; they will abide eternally therein." (Quran: 2:276)

"O you, who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers." (Quran: 2:278)

The Messenger of Allah articulated usury in his Last Sermon as, "Allah has forbidden you to take usury; therefore, all usury obligations shall henceforth be waived off".[63]

Though this abhorable act of usury has been renounced by almost all religions and great people of the world, yet the voraciousness of the tribesmen for money has turned them blind and mint money even if it is by means of usury.

3.4.11. Killing the bread-earner instead of culprit

Badal has been one of the important elements of *Pashtunwali.* A Pashtun tribesman will never be at rest until he takes revenge from his enemy. The concept of *Badal* has been explained at length in chapter 2 and doesn't need to be elucidated here. Nevertheless, it must be mentioned that tribal system is inherently based on the principle of collective responsibility; therefore, any offence committed by an individual is cognized as an offence perpetrated by the whole family/tribe of the offender.

Hence, they kill an enemy, who holds a social status or is the bread-earner of the entire family, in sheer violation of Islamic Sharia. No doubt, Islam allows *Qisas* (vengeance) based on the principles of ear for ear, nose for nose and eyes for eyes, but the tribesmen set aside religion where honour is involved. This horrific social custom of revenge practised by Pashtun tribesmen has no place in Islam, which has also ascribed to the concept of *'Pashto nim kufar da'*.

Though the grim picture of *Riwaj* as shown above seems to be quite beyond the ambit of Islamic laws, yet one cannot call it a renegation from the fold of Islam. The phrase has come out of the social jargon of Pashto Language wherein it puts stress on a particular word, phrase or sentence. We have the same jargon for a Mullah (religious scholar) when we say, *'Kafir Mullah de* - means he is a fierce and a strong religious scholar. Thus, the adage, *Pashto nim kufar da*, just expresses the rigidity of *Pashtunwali* and reflection of certain practices of *Riwaj* which are repugnant to Islamic laws.

The contrast described above signifies itself the falsification of the two conceptions in the first instance. Therefore, I strongly disagree with this misconceived notion, for a religious fanatic can neither be a saint nor a devil. A saint spends his spiritual life under the dictates of God and never indulges in bullfight for religion. He holds manners through which he influences others and brings them in his circle. On the contrary, a devil/infidel cannot be a religious fanatic because he doesn't profess any religion to fight for. The afore-mentioned un-Islamic practices may fall within the ambit of *Gunah-i-kabira* (abominable sin) to which the tribesmen must be

accountable on the Day of Judgment but giving a verdict of *kufar* on merely practicing these social rituals is quite unfair. These social practices are very much rampant among the Pashtuns including the *Mullahs* of the Pashtun society. Being a tribal, i would say, very few people would have awarded share in property to their sisters and daughters as per Islamic injunctions; rather the *Mullahs* are more prone to social norms in the division of property and wealth. Moreover, we never heard of anyone including *Mullah* who would have sought the consent of his sister/daughter for marriage. Every tribesman follows what the *Riwaj* enjoins upon him in the given circumstances.[64]

REFERENCES AND NOTES

1. Dr.Hanif Khalil, *Pashtoon Culture in Pashto Tappa,* (Islamabad: National Institute of Historical & Cultural Research Quaid-i-Azam University, Nd),p.124-126
2. Quranic verse no: 2:177 available athttps://quran.com/2/177, accessed on May 20, 2017
3. Noor ul Ameen, *Pakhto, Pakhtun aur Pakhtunwali*, (Swabi: Sharoom printing press, 2015), p.97,98
4. Olaf Caroe, *The Pathan*, (Karachi: Oxford University Press,1958), p.59-69
5. Maulana Abdul Qader, *Muqadma on the book, The Pathan by Olaf Caroe*, (Peshawar: Pashto Academy, University of Peshawar, Nd),p.7-9,25
6. Khan Abdul Ghani Khan, *The Pathan*, p.5, 6 available at http://pdfbooksfree.pk/the-pathan-by-khan-abdul-ghani-khan/, 16 June, 2016.
7. Noor ul Ameen, p.96
8. Interviews with the Sikh shopkeepers of Khyber Agency in Karkhano market, April 20, 2016.
9. Interview with Muazam Khan, a known Comrade and Khudai Khidmat gar (Charsada District), November 22, 2016.
10. *Tirah Sikhs glad at getting status of tribal elders*, The Dawn available at www.dawn.com/news/1193942. accessed on 20 May, 2017
11. Engineer Abdul Qayum Afridi, *The Hill Tribes along the Durand line,* (Peshawar: IRIS Enterprises, 2003), p.23 and Dr. Hanif Khalil,

Pashtoon Culture in Pashto Tappa, (Islamabad: National Institute of Historical & Cultural Research, Quaid-i-Azam University, Nd),p.124-126
12. Interview with Maulana Feroz Ali, Hassu khel (NWA), March 15, 2015.
13. Khan Abdul Ghani Khan, p.5
14. Interview with Maulana Mahmud ur Rehman, Hassu khel (NWA), March 15, 2015.
15. Interview with Muazam Khan, November 22, 2016.
16. Interview with Maulana Mahmud ur Rehman, March 15, 2015.
17. Khan Abdul Ghani Khan, p.6
18. Tipu Muhabat Khan, *The Tribal Areas of Pakistan, A Contemporary profile,* (Sang-i-Meel Publication, 2008, Np, Nd), p.78
19. ibid, p.71
20. Dr.Hanif Khalil, p.36
21. Quranic verses and Hadiths of the Holy Prophet (sm) about children's rights in Islam available at https://islamhouse.com/en/articles/378915/, accessed on June 9, 2016.
22. Quranic verses and Hadiths of the Holy Prophet (sm) about children's rights in Islam available athttp://www.islamtoday.net/albasheer/SearchByGoogle.aspx?n=&q=children%20rights%20in%20islam&f=4&t=2, accessed on June 9, 2016.
23. Guidance taken from *Rohi Mataluna*, a book authored by Prof. Muhammad Nawaz Tair and Mr. T.C. Edwards, (Peshawar: Pashto Academy University of Peshawar, 1982).
24. Quranic verses and Hadiths of the Holy Prophet (sm) about the rights of neighbours available athttp://www.quranreading.com/blog/rights-of-

neighbors-in-islam/, accessed on September 10, 2016.
25. Quranic verses and Hadiths of the Holy Prophet (sm) about hospitality available at https://www.islamreligion.com/articles/10662/treating-guests-islamic-way/, accessed on September 10, 2016.
26. Guidance taken from *Rohi Mataluna*,
27. Quranic verses and Hadiths of the Holy Prophet (sm) about Parda (veil) available at https://wikiislam.net/wiki/Qur%27an,_Hadith_and_Scholars:Hijab, accessed on 16 July, 2017.
28. Quranic verses and Hadiths of the Holy Prophet (sm) about kindness and forgiveness available athttp://abuaminaelias.com/search_gcse/?q=kindness%20and%20forgiveness, accessed on 16 July, 2017.
29. Quranic verses and Hadiths of the Holy Prophet (sm) about brotherhood and love available athttp://abuaminaelias.com/brotherhood-in-the-quran-and-sunnah/, accessed on 16 July, 2017.
30. Guidance taken from *Rohi Mataluna*,
31. Quranic verses and Hadiths of the Holy Prophet (sm) about self-respect and respect of others available atwww.learnquran.over-blog.com, accessed on June 9, 2016.
32. Quranic verses and Hadiths of the Holy Prophet (sm) about self-respect and respect of others available atwww.ahadith.co.uk, accessed on June 9, 2016.
33. Guidance taken from *Rohi Mataluna,*
34. Quranic verses and Hadiths of the Holy Prophet (sm) about compassion and evil fighting available

atwww.quranalonebesthadith.wordpress.com, accessed on June 9, 2016
35. Guidance taken from *Rohi Mataluna,*
36. Quranic verses and Hadiths of the Holy Prophet (sm) about truthfulness and keeping promise available athttps://www.islamreligion.com/articles/424/virtue-of-truthfulness-part-1/, accessed on 10 October, 2016.
37. Quranic verses and Hadiths of the Holy Prophet (sm) about truthfulness and keeping promise available atwww.Al-islam.org, accessed on 10 October, 2016.
38. Guidance taken from *Rohi Mataluna*,
39. Dr.Hanif Khalil, p.135
40. Roshan Shah Qalamyar, *Pashtun aur Askariat Pasandi – Asbab-o-Hal,* (Peshawar: Sami Printers, 2015), p.25-27
41. Ibid. p.33,34
42. Ibid.p.25-27
43. Ibid.p.41-61
44. Shabir Ahmad and Abid Karim, *The prohibition of Nationalism in Islam*, available athttps://www.zawaj.com/editorials/nationalism_ahmed.html, accessed on 20 August, 2016.
45. Interview with Ihsan Dawar, 20 Feb, 2106
46. Khan Abdul Ghani Khan, p.64
47. Quranic verses and Hadiths of the Holy Prophet (sm) about honour killings available athttp://www.quranreading.com/blog/islam-and-honor-killings/, accessed on 20 September, 2016.

48. Abid Husain, *Islamic Laws of Inheritance*, available atwww.islam101.com, accessed on20 September, 2016.
49. Interviews with Ahmad Khan Orakzai, Jan 10, 2016 and Ihsan Dawar, 20 Feb, 2016
50. Kaleef K Kareem, *Islam on Forced Marriage*, available at https://discover-the-truth.com/2013/12/15/islam-on-forced-marriages/, accessed on 13 July, 2016.
51. Interviews with Ahmad Khan Orakzai, a retired Deputy Secretary Law & Order FATA Secretariat , 08 April, 2015 and Ihsan Dawar, a season journalist from Mir Ali (NWA),, 20 Feb, 2106
52. Dr. Babri Gul Wazir, *The Faqir of Ipi*, (Pakistan Publication, Np, Nd), p.17
53. Interviews with Malik Tarin Khan, Lund Muhammad Khel, 22 March, 2015 and Malik Zardullah Wazir, Zeli khel (SWA), Jan 13, 2017.
54. Interview with Ihsan Dawar, 20 Feb, 2016
55. Muhammad Ibrahim Al-Tuwajiri, *The Book of Nikah,* (Riyadh: King Fahd Library, 2010), p.24
56. Quranic verses and Hadiths of the Holy Prophet (sm) about divorce available athttps://quran.com/65
57. Quranic verses and Hadiths of the Holy Prophet (sm) about divorce available athttp://www.irfi.org/articles/articles_251_300/quranic_concept_of_divorce.htm, accessed on July 18, 2017.
58. Muhammad Ibrahim Al-Tuwajiri, p. 33
59. Interviews with Malik Khan Afzal Afridi, Qambar khel (Khyber Agency), Jan 10, 2017 and Malik Zardullah, Jan 13, 2017.

60. Interview with Maulana Feroz Ali, 22 Dec, 2016.
61. Tipu Muhabat Khan, p.82-85
62. *Reforming the Jirga system: Sensitization on fundamental human rights,*(Islamabad: Community Appraisal & Motivation Program (CAMP), 2013, p.46
63. Verses of Quran and Hadiths about usury available athttps://quran.com/2/275, accessed on 17 July, 2017.
64. Interviews with Naushar khan, 15 Feb, 2015 and Ihsan Dawar, 20 Feb, 2106

CHAPTER 4

RIWAJ IS STUMBLING

Riwaj has been the victim of imperialism in the history of the Pashtun tribesmen. It used to exist in its original manifestation before the advent of the British colonial authorities in the Pashtun homeland. It lost its purity with the change in the socio-economic conditions of the urbanized Pashtun areas and the assumption of an official form by the *Jirga* system in the protected areas of the tribal areas. This chapter would therefore shed light on the changing pattern of *Riwaj* in reference to the impacts of the British policy, emergence of Pakistan, impacts of education and politics, the advent of Taliban in FATA, intervention of Pakistan army in the tribal belt, socio-economic changes and advent of modern technology in the tribal areas. I would use the word Imperialism in this chapter which might be somewhat hard and unreasonable to some readers for which I would excuse in anticipation. However, being a tribal i deem fit to use it, for the tribesmen have remained a peace-loving people for ever, yet they have always been subjected to oppression by the new comers. The oppressors would come to subjugate and impose their will and system upon the tribesmen to which they were not accustomed to.

The Pashtun tribesmen are fortunate enough to have been located in a very strategic position of the world that provides a communication link between the Sub-Continent and Central Asia and a gateway to the world raiders and traders as have already been discussed. Though the strategic location has given them leverage over other people in the region; at the same time it has

caused great havoc and has created existential problem for them. All Great Games of the world have been fought on the Pashtun soil in which the role of the Pashtuns has remained inevitable; therefore, the Pashtuns as a whole have suffered heavy losses in term of human lives, socio-cultural degradation and economic under-development. Whether it is the World Wars for raising Empires and Community at world level or it is the Cold War for securing uni-polarity in the 20th century, the Pashtun tribesmen admittedly played an historic and pivotal role. After the end of the cold war, the war on terror began to haunt the lives of the tribesmen which caused them formidable losses on all accounts including the procedures and applications of *Riwaj* - an irreparable loss that can never be recovered in the days to come.

Therefore, in the succeeding sections of this chapter, effort will be made to highlight those factors which have affected *Riwaj* in totality and have created a vacuum to be filled in by a legal system which is acceptable to the tribesmen across the board. Furthermore, I'll restrict myself to the recent past of imperialism against *Riwaj* as there is no written history of the distant past available which can help us guide in this regard. It must be mentioned in anticipation that the factors, upon which I am going to dilate, though impacted *Riwaj* negatively, yet they brought about positive changes in the lives of the tribesmen which may not be under-estimated at all.

4.1. British imperialism and Riwaj

British imperialism culminated in the 20th century. The tiny state of the Englishmen raised an empire whose borders were said to have had limits where sun was setting down. Such a huge empire was, no doubt, raised

due to scientific and technological developments coupled with the political sagacity of the English leaders and the justice system that was prevalent at that time.

After the discomfiture of the Sikhs, the Britishers formally annexed the Punjab into their empire in March, 1849. The colonial officers made efforts to evolve a more viable system of administration, policing and judiciary so that people could forget the oppression of the Sikh rule and accept them as a new master. They thought they would shun violence and restore law and order in the trans-Indus region. They would be able to control the restive Pashtun tribes that would live either independent or under the influence of the Amir of Kabul. Apart from internal administrative, legal and political issues, the potential threat of Russia loomed large in the eyes of the British India which had determined to halt the British influence in the Indian Sub-Continent at all cost. The geographic location of the trans-Indus region of the Pashtun tribes particularly the borderland was strategically so important to be neglected; therefore, it was essentially required to bring them into the fold of the British Empire. Besides, it was an inter-wars period and the British Empire needed to open new venues for generating revenue from the green valley of Peshawar to bridge the growing budget deficit which had occurred as a result of the heavy security expenses.[1] In addition, some religious leaders of the Pashtun tribes started movements against the new master by mobilizing people on religious grounds which could jeopardize the strategic interests of the British Empire.[2] Lastly, the formal legal system introduced by the

colonial master was inconsistent to the Pashtun social customs and code of conducts; therefore, it was inadequate to control the unruly Pashtun tribesmen and the ever increasing crime rate in the Pashtun belt.[3]

The subjugation of the Pashtun territories was the need of the hour; therefore, the colonial authorities took several political, administrative and judicial measures. Militarily, the British colonial empire set in a forward policy to bring the Pashtun tribes of the trans-Indus region and tribal areas under the ambit of the British Empire by leading military expeditions against them. Politically, the colonial officials adopted a policy of repression and selective patronization of the Pashtun leading elites. In addition, a close-door policy was launched to secure the borderland as a buffer zone for which the British Indian Government fought several wars with Afghanistan. The Britishers succeeded in their mission up to their satisfaction. In 1879, Amir Yaqub of Afghanistan signed the treaty of *Gandamak* with the British Raj under which the Amir agreed to give the borderland (today's FATA) to the Britishers, among other things.[4] The close-door policy reached to its culmination in 1893 when the King of Kabul, Abdur Rehman agreed to draw a borderline between Afghanistan and the British India which is known in history as Durand line after the name of Sir Mortimer Durand. Afghanistan construes it as a temporary line drawn under duress while Pakistan recognises it as a permanent International border between the two neighbouring countries.[5]

The trans-Indus region was turned into a security risk. The British officials realized that the prevalent system in the Pashtun belt was inadequate to suppress the unruly Pashtuns and needed to revamp it by taking strident executive measures to curb the rising crime rate and bring internal normalcy to the region. While interacting with the Pashtun tribes of the Peshawar valley the British officials comprehended that it was not an easy cake to cut and eat. The Peshawar valley continued to experience high level of killings, violence and theft which is evident from the official documents of the British officers. An official report of May, 1847 of the Peshawar division mentions that a woman was paraded through a city on a donkey with her face blackened for poisoning her husband. Another report states that a man found his niece sleeping with her servant; therefore, both were killed on the spot. The British officer neglected the local Pashtun customs and ordered the execution of the murderer. In December, 1847, a man saw her wife in objectionable condition with his neighbour. He flared up and killed them both on the occasion which was obviously an inappropriate behaviour inconsistent with the British notion of criminal justice. Similarly, hundreds of criminal cases were reported and registered with the police that frightened the British Indian bureaucracy to tackle with.[6] Thus, Indian Penal Code and the Code of Criminal Procedures were promulgated in 1861. A Chief Court comprising two judges was established in 1866 to deliver justice in accordance with the Indian Penal Code and Code of Criminal Procedures. In 1871, Criminal Tribes Act was enforced, which provided for registration,

surveillance and control of certain tribes. All these measures couldn't improve the crime rate in the region and proved to be a futile exercise because the more the executive measures were undertaken and judicial machinery elaborated, the greater the number of crimes particularly murders and kidnapping increased. To teach a lesson to the stubborn Pashtuns and Baluchs, the colonial government of India went on to promulgate the Punjab Frontier Regulation in 1872[7] - a piece of law which had no parallel in the history of the world. It came to be known as a black law - a law that gave unprecedented judicial and administrative powers to the Deputy Commissioners. However, for the first time the British officers comprehended the importance of Jirga system and gave it a pivotal role in the new regulation. The Deputy Commissioner could constitute a *jirga* of three or more leading men to resolve a dispute whose opinion or finding could be accepted or set aside or a second *jirga* could be constituted to give a second opinion on the dispute. The *jirga* would impose fine or would determine compensation on the convicted person only; however, capital punishment could be awarded by the formal courts after production of solid evidence.[8] The new regulation also forced the tribesmen to provide free night safety through *naubati chawkidari* (watchmanship on turn) system. The colonial authorities also borrowed the concept of collective responsibility, as enshrined in the Frontier Crimes Regulation, from the Pashtun's *Riwaj*. In March, 1848, a young girl from a village in the vicinity of Peshawar was kidnapped by some Afridi highlanders

in lieu of whom the people of the district Peshawar caught and held some people of the kidnapper's village as hostages through the custom of *Baramta*. The hostages were released in return for the release of the kidnapped girl. The British officers took cognizance of the offence of holding hostages of the Afridis' tribe - people who were not the real culprits. They thought to impose a ban on the social practice against the highlanders who used to be invariably involved in the abduction of cattle and property theft. However, elders of the local tribes of district Peshawar approached the officers of the local administration and convinced them that it would further deteriorate law and order if the practice of *Baramta* (holding of hostages is called *yarghamal* in Waziristan) was discontinued.

Notwithstanding, all executive, administrative and judicial powers, the Deputy Commissioners and the Political Agents failed to bring normalcy in the Pashtun belt. The uptrend of crimes continued because the new laws were inconsistent with the prevailing Riwaj of the Pashtun tribes. The un-acceptance of the lengthy, expensive and cumbersome process of litigation in addition to the feelings of occupation of their land brought the Pashtuns in conflict with the new master. The tribesmen were quite ill-equipped in terms of weapons, arms and ammunitions. They used to fight with their swords and locally made guns which were of no match to the sophisticated weapons of the British forces. Nonetheless, the tribesmen being born soldiers impressed upon the British officials that they would never compromise on their freedom and would fight till they would be left to live in consonance with their *Riwaj* and *Pashtunwali.* Robert Nichols states, "Any colonial judgment and retribution in accordance with

the Indian Penal Code might be seen by the Pashtun tribesmen as arbitrary, illegitimate, and unrepresentative of the Pashtun normative code of social conduct, justice and *Pashtunwali*".[9]

While going through the reports of the Deputy Commissioners, Commissioners and other political officials, the Lieutenant Governor of the Punjab realized that the real problem of disorder lay in the social conditions of the Pashtun territories and the rigidity of the British laws which demanded legal evidences complete in all respects to convict the culprits. Under the British formal legal system the accused must have the benefit of the doubt and the right of appeal. Nevertheless, the Pashtun code of conduct and *Riwaj* differed with the formal legal system, for it was a matter of honour for a Pashtun tribesman to take revenge for the murder or any other harm inflicted upon him by his enemy. It was even commendable to hire assassins and kill one's enemy at midnight, but in fact, an ignominy to leave a slur upon the family honour un-avenged. Killing of a man and woman for honour, reconciliation by making payment of blood-money or the gift of a girl in betrothal were private wrongdoings and were not crimes in the eyes of the Pashtuns. The deceased would name the instigator instead of the assassin who would stab him to death and would nominate as many foes as that could serve their purpose. A thief could be killed in the act. Bitter disputes on land would continue for generations which would result in unending enmity. Moreover, they would kill another member of the murderer's family to take revenge. The situations were very much grave in the directly

controlled Pashtun areas to handle with, let alone the tribal territories which used to be a no man's land at that moment in history.[10]

The Lieutenant Governor of Punjab also realized that there were certain factors due to which the newly enforced system was not viable enough to achieve the desired goals. The official documents described that the existing provisions of law could not be availed in the repression of crimes; that the elders of the village communities did not understand how to perform their officially assigned duties; that the Deputy Commissioners were very much preoccupied in political and administrative matters to fully focus on the criminal administration; that the local Magistrates were overloaded with judicial work due to influx of criminal cases on account of which cases used to delay; and that there were certain weaknesses and deficiencies in policing and Magisterial staff.[11]

In this backdrop, the colonial authorities decided to revamp the administrative and judicial system and repealed the Punjab Frontier Regulation of 1872, the Punjab Frontier Amendment Regulation of 1873 and the Punjab Frontier Regulation of 1876 and enacted a modified Punjab Frontier Crimes Regulation which was officially notified in the Gazette in November 188.[12] The modified regulation comprised certain administrative, judicial, magisterial and policing measures to be adopted by the Deputy Commissioners, police, Magistrates and

the Political Agents in the tribal areas which fell under the jurisdiction of the new regulation.

The striking feature of the Punjab Frontier Crimes Regulation was the emphasis put on the enhanced role of the council of elders which was empowered to resolve disputes of criminal and civil cases. The district administration and political officers were strictly directed to honour and enforce the decision of the *jirga*. The *jirga* was also empowered to impose fine, sentence imprisonment or award both punishments in the form of recommendations to the Deputy Commissioners and the Political Agents. Under the new regulation, the *jirga* could award a sentence of seven years of rigorous imprisonment. However, the Deputy Commissioner and the political officer had unbinding authority to accept the recommendation, reject it or refer it for reconsideration. Thus, the institution of *jirga* got changed in its nature and character and took official tint. It must be mentioned that the role of *jirga* at local level remained the same in the tribal areas as the *jirga* constituted by the administration used to settle disputes within the protected areas which were reported to the political agent officially.[13]

The constitution of the official Jirga was successful to the extent that it bridged the gulf between the tribes and the government. The British Government would need a liaison which they found in the shape of *maliks*–people who were appointed by the British Indian Government as representatives among the tribesmen to curb their unruly fellow tribesmen. James W Spain defines the *malik* as, “The leaders of the Pathan are called *maliks*. In Arabic, the word means King. A Pathan *malik*, however, is no

more than a first among the equals, and that only by dint of constant endeavour to prove that he merits slight pre-eminence".[14] They are being paid *Muajeb* on half yearly basis in lieu of free passage of the government machinery through the areas of influence of the *malik.* They also receive *Aabzana* as a compensation for the cultivable land of the tribesmen being acquired for the construction of roads and railways track.[15] It must be mentioned that though Amir Abdur Rehman concluded Durand Line agreement with the British India but it were the tribal *maliks* who made it a success by their treacherous acts. Robert Issaq Bruce writes in his memoir that the basic purpose of the expeditions into the tribal territories was the delimitations of frontiers with Afghanistan under Durand Line agreement which couldn't be achieved without the assistance of the tribal *maliks*.[16] This signifies the role of the *maliks* and their services rendered to the colonial authorities in lieu of allowances and incentives they received at the cost of the freedom of their tribes.

A *malik* may be differentiated from the *masher* in the sense that a *malik* is the representative of the government who is appointed from within the tribe by granting allowances in lieu of services rendered while *masher* is the man of wit and wisdom who commands respect in the society by sheer dint of his in-built qualities of heart and mind. He may have liaison with the government or not, he has a vital role in the affairs of the tribe and cannot be neglected. A tribesman who is

simultaneously a *malik* as well as *masher* has more influence in the tribal affairs. The wisdom and sagacity of the *masher* can be inferred from the conversation between H. A. Anderson, the then Deputy Commissioner, Bannu and Mani Khan, the grandfather of the Late Senator Faridullah Khan. H. A. Anderson asked Mani Khan, "which is the best flower and why?" Mani Khan replied that *Karbeska Gul* is the best because man is wrapped up in a fabric made up of *Karbeska* when he comes to this world and wrapped up again when he leaves this mundane world. In fact, cotton flower comes out of the seedling and turns into cotton fibres which look like flower to which we call *Karbeska/Malooch Gul* in Waziristan. H.A. Anderson is said to have got so much impressed by the wisdom and intelligence of the elder that he gave him the title of the Chief of Wazir.

Before the creation of the formal institution of *Maliki* by Richard Issaq Bruce, *maliks* would exist in the tribal life of the borderland in the manifestation of elders. They were, in fact, the popular men of their tribes. Their valour, chivalry, wisdom and hospitality would be known to all. They would be elderly; therefore, they would be called as *spinziri/spingiri.* They would lead their tribes and *khels* in all time of distress and would stand by them in need and adversity. There was no central authority in the borderland to authorize someone to lead the tribe or keep liaison with; therefore, every man of quality of heart and mind could excel himself in the tribal affairs to qualify for the status of a *masher*. *Mashartub* was not hereditary at *khel* level; nonetheless, it was hereditary at family level. After the death of the *masher,* his elder son would put his feet in his shoes and would wear a turban of his father in the gathering of the tribe or family. They would announce

that the *Dastar* of his father had been placed on the head of his elder son. In case of non-availability of a son, his brother would get this honour instead. *Mashartub* didn't involve financial benefits but was an honour and recognition for one's services to the tribe.[17]

In 1893, Richard Issaq Bruce formally created the institution of *Maliki* and gave the *maliks* a leading role in the tribal affairs. It was indeed a title given to those men who used to be loyal to and provided services to the British officials. Mr. Bruce writes in his memoir titled, "the Forward Policy" that he remained Assistant under Robert Groves Sandeman in Baluchistan who had introduced a Sandeman system or the "forward policy" aimed at recognizing the status of the tribal chiefs of the Baluch and Pashtun tribes and the key role of the *jirga* in dispute resolution. The concept was successful to his satisfaction; therefore, he was posted as Commissioner D. I. Khan to adopt the same policy of Robert Sandeman against the tribesmen of the Gomal and the Tochi. He states that he hired the services of the *maliks* of the nearest settled areas to help him agree the *Mashran* and *Mutabaar* of the tribes of Waziristan for a *Jirga* (The *Mutabaar* of other tribes in the northern tribal belt are called *Sufaid Raish/Spingiri/grey beards*). Richard Bruce commendably succeeded in his policy. Hence, *Jirga* was held with the elders of Wazirs, Mahsuds and Dawars for bringing their tribes under the control of the British India in lieu of which they were rewarded with lavish incentives in addition to allowances and jobs in the British forces. Accordingly, the formal institution of *maliks* was established under which the appointed *maliks* were

required to provide liaison between the tribe and the administration. It was under this policy that 15 tribesmen of Mahsud tribe who had taken arms against the Britishers in connivance with the Amir of Kabul were brought to Richard Bruce who hanged them for their rebellious activities.[18]

This account of the Bruce's memoir shows the integrity and faithfulness of the *maliks* with their tribes. They provided all fair and unfair services to the political officers of the colonial rule against the *Riwaj* of the tribesmen. They remained loyal more than the king himself and played in the hands of the British officials. They acquiesced to the Britishers to come and control their territories giving their people the plea that they invited the colonial authorities to protect them against the blood-thirsty rival tribes. In fact, elders, whose loyalty and fidelity could never be questioned even if they would be weighed in gold, became the spies of the enemy and began to deceive their own simple and straightforward tribesmen.

The loathing policy of the tribal *maliks* continued unabated. After independence the tribesmen willingly joined Pakistan. The system of governance under the black laws – the Frontier Crimes Regulation needed to be done away with but the successive governments kept it continued and left the tribesmen under the domacle's sword of the British regulations which were devised to curb the unruly tribesmen. The *maliks* kept on enjoying honeymoon with the new agents - means Pakistani souls in colonial style. Nothing changed indeed, except the men behind the power and authority - men who are more

interested in money minting than providing governance based on justice and public interests.

The irony of destiny of the tribesmen didn't end here. The borderland of the tribesmen was officially declared as federally administered tribal areas, by adding more territories in its ambit such as Orakzai, Bajaur and Mohmand agencies. With the emergence of new tribal agencies new *maliks* in the name of *Lungi-holders* (elders wearing turbans) were appointed who tended to have more fidelity with the political officers than the *maliks* of the British time which greatly affected the judicial system under *Riwaj* in the tribal areas.[19]

Coming back to the British imperialism and its impacts on *Riwaj,* the modified Punjab Crimes Regulation of 1887 gave unbridled powers to the district administration to suppress crimes in the Pashtuns' belt. The new regulations proved somewhat fruitful in the inception; therefore, the British officers extended the colonial authority to the distant Afghan border where a new political agency of Kurram was created in 1892. Similarly, after the institutionalization of *Malik system*, two new political agencies of North Waziristan and South Waziristan were created in 1895 and 1896 respectively. In fact, the greater the British officers came into contact with, the greater they began to learn how to control the stubborn and belligerent tribesmen. However, law and order situations worsened than ever, partly because of the policy of repression and suppression by the colonial officers and partly because of the non-acclimatization of the Pashtuns to the writ of central authority. Moreover, administratively the entire Pashtun belt used to fall under

the jurisdiction of the Punjab Governor who ran the whole administrative machinery through Divisional Commissioners. Thus, it was practically difficult to control the far flung trans-Indus areas stretching up to the extent of Afghan border at a time when there was no state of the art communication system at their disposal.

In 1899, Lord Curzon became the Viceroy of India who determined to strike down the commotion in the North West Frontier territories of the Pashtuns. He realized at once the administrative issues of the Pashtun belt and constituted a four member committee including the Commissioner of Rawalpindi Division, C .L .Tupper and the Commissioner of the Peshawar division, A. F .D. Cunningham. The committee met in October and November 1899 to draft new regulations to be called as Frontier Crimes Regulations which were approved on 12 March, 1900. The new regulations involved changes to the extent of more elaboration of the existing regulations and their improvement with certain new additions. The committee didn't recommend any amendment in the basic features and principles of the old regulations of 1887. Of the fifty four clauses and three schedules, thirty two were listed as amended, six as repealed, two as part repealed and three had a new section substituted. A new Chapter VI - Appeal and Revision, with eight sub-clauses were added. The text of the new regulations was printed in May 1900 which was adopted in November 1901 by Lord Curzon. The most striking feature of the new regulations was the creation of a new province of NWFP comprising five districts of Peshawar, Kohat, Hazara, Bannu and Dera Ismail Khan. The new regulations also brought the tribesmen of Kurram, Khyber, North

Waziristan and South Waziristan agencies under the ambit of FCR to be run by Political Agents.[20]

The text of the amended regulations explicitly shows that all fundamental rights were denied to the tribesmen. They had no right of security of life, equality before the law and fair trial, protection against arbitrary arrest or detention, freedom of movement, opinion and expression and freedom of assembly and association. The insertion of arbitrary and brutal sections of' Collective Territorial Responsibilities' broke the backbone of the tribal skeleton. Any offence committed by any individual of the tribe was assumed to be an offence perpetrated by the whole tribe. The tribe was responsible to produce the culprit before the political administration failing which indiscriminate arrests of the tribesmen would be made. Seizure and confiscation of property, denial of access to any facility into British India and prohibition of the tribesmen to use any channel of communication within the limits of the British India were the tactics used by the British India against the tribal. Their houses could be demolished and their businesses could be closed on a minor offence. In fact, laws are formulated or revised to provide protection and rights to the people, but any addition or modification in FCR would mean more deprivation and alienation of the tribesmen- as a whole revenge.

Before the advent of the Britishers into their homeland, the tribesmen would resolve their disputes through *jirga*. They would live in complete harmony and, as a result, peace and tranquillity was prevailed in the tribal areas. The Britishers greatly harmed the institution of *jirga* by

making it subservient to the Political Agent. He could refer any civil or criminal case to a *jirga*. Though *jirga* had taken the place of a court, yet the final authority rested with the Political Agent/Deputy Commissioner. After submission of the findings by the *jirga*, the Political Agent could remand the case to the *jirga* for further deliberations and finding; he could constitute another *jirga*; he could refer the case to a civil court in the district; he could issue a decree on the basis of the findings of the *jirga*; and he could declare that there was no need of further proceedings in the dispute or crime. This indicates how much sincere were the Britishers to this informal institution and the *Riwaj* of the tribesmen. It was just a strategy to give an impression to the world that they had great regard for the sentiments and local customs of the tribesmen.[21] Besides, *Riwaj* also witnessed changes in its applications and procedures. For instance, previously in eloping cases the tribesmen would cut the noses and ears of the culprits but this punishment could not halt the social curse and got multiplied. The *Riwaj* of cutting nose and ears was replaced by the killing of both the culprits in 1895 by the elders of the *jirga* duly agreed by the Political Agents that remained till date and resulted into the loss of many young tribesmen and tribeswomen.

In fact, FCR affected the *Riwaj* of the tribesmen to such an extent that it could not withstand its aftershocks and is still stumbling. The institution of *maliks* got pivotal role in the *jirga* system. The elders of the *Jirga* who used to be the backbone of the tribal legal system - Riwaj turned to be the house-maids of the Political Agents. Their liberty in the resolution of disputes squeezed. They could put

forward findings and recommendations only upon which the Political Agent was supposed to issue his verdict. Their houses began to be searched out for the offenders and absconders and could be demolished for minor offenses which were against the tribal *Riwaj*. In short, *Riwa*j and FCR were intermingled in such a manner that the former lost purity in its applications and procedures.[22]

4.2. Riwaj after emergence of Pakistan

The emergence of Pakistan as a separate homeland and the speeches of the Quaid-i-Azam Muhammad Ali Jinnah, the founder of the nation, to the tribal *jirgas* caused great satisfaction among the tribesmen. During his visits to NWFP he held *jirgas* with the tribal elders and announced certain confidence building measures to win their hearts. In his address to the tribal elders in April 1948, he proclaimed the withdrawal of Pakistan army from the tribal territories and the continuation of the tribal area's affairs in accordance with the local *Riwaj.* Nevertheless, the early demise of the Great Quaid, the political and constitutional instability in the country followed by military intervention into politics, at a time when the world was moving towards the awful cold war of the 20th century, left no time for the central government to pay attention to the tribal affairs and bring the tribes into the mainstream Pakistan. Perhaps the emergence of the cold war necessitated the continuation of FCR as Pakistan was going to play the role of the frontline state being ally of the Western bloc. Hence, *Riwaj* and FCR remained to operate simultaneously in FATA; rather FCR got more recognition and acceptability due to the acceptance of

Pakistan by the tribes as their motherland.[23] Before going to decipher the impacts of the policy adopted by the Government of Pakistan towards FATA, it is necessary to give a brief historical account of the constitutional reforms and modifications made in FCR by the successive governments in Pakistan.

NWFP was then a part of the Punjab province under the British India and was administered by the Chief Commissioner, Punjab. However, it was granted the status of a province and was partitioned into settled and tribal areas in 1901 as mentioned in the preceding section and was put under the supervision of the NWFP's Governor. In 1947, Pakistan came into being and adopted the Dominion Act of 1935 and FCR of 1901 with certain modifications until the Constitution of 1956 was promulgated [24] wherein FCR was abolished in NWFP followed by Baluchistan and Gilgit-Baltistan in 1973. Nonetheless, FATA remained under the draconian law even after becoming a part of the federation under article-1 of the Constitution of 1973. Moreover, Article 246 (c) of the Constitution divided the federally administered tribal areas into administrative agencies and frontier regions. The former include Bajaur Agency, Mohmand Agency, Khyber Agency, Orakzai Agency, Kurram Agency, North Waziristan Agency and South Waziristan Agency while the latter includes the frontier regions adjoining to district Peshawar, district Kohat, district Bannu, district Lakki, district Dera Ismail Khan and district Tank.

Besides, the Constitution empowered the President of Pakistan to make rules for FATA under Article 247. He is

the constitutional head as well as the Chief Executive of FATA. No act or legislation enacted by the parliament can be extended to FATA until the President desires so. It will be ludicrousness for the constitutional experts and democrats to know that the elected members of the parliament from FATA can make legislation for the federation of Pakistan but they cannot initiate a piece of legislation for their own people. In addition, the tribes of FATA have been deprived of the fundamental rights as guaranteed in Articles 8 to 28 of the Constitution which reflect the bias and hatred in the minds of the constitution-makers against the people of the tribal areas. They have been divested deliberately of the constitutional rule and democratic rights as Article-8 says that any law inconsistent to fundamental rights as envisaged in the Constitution shall be void to the extent of such inconsistency. FCR, if examined and analysed in reference to Article-8, is a total negation of the Constitution and causes greater anomalies therein. If FATA is the part of the federation and tribal are equally the citizens of Pakistan, then they must be entitled to have equal rights in all facets of the national life. Unfortunately, the facts are absolutely otherwise. One does not know why they have been alienated despite their vehement loyalty and countless sacrifices laid down for the country.

In addition to this, one can look at the absurdity of the formal legal system under the Frontier Crimes Regulations which don't provide the accused the right to legal representation, production of material evidence and witness for cross-examination. The accused has no right to appeal against the decision of the Political Agent whose verdict can only be challenged in the FATA

tribunal headed by a bureaucrat. The writ of the Apex Court is not extended to FATA. The judicial powers are being exercised by the Executives without any checks and balances. The Political Agent seems to be 3 in1- means he is an investigator, a prosecutor and a judge himself. Moreover, constitutionally FATA may not fall within the purview of the High Court Peshawar but it cannot be precluded from the jurisdiction of the Supreme Court under Article-184(3) being federal territories.[25]

The saga of Frontier Crimes Regulations didn't end here. In 1996, President Faruq Ahmad Khan Leghari granted the tribesmen the right to vote through adult franchise before which only maliks could poll vote to elect their representatives for the National Assembly. Administratively, the entire affairs of tribal areas were run through a FATA Cell in the Planning and Development department of Khyber Pakhtunkhwa. As a result, FATA was neglected in annual development programs and was left at the mercy of the Political Agents. In 2002, the Governor Secretariat was established to look after the administrative and development matters of FATA under the close supervision of the Governor Khyber Pakhtunkhwa. Thereafter, the process of reformation and changes in the administrative structure of FATA quickened. The then Governor of Khyber Pakhtunkhwa, Lt. General (R) Iftihar Hussein Shah decided to establish a full fledge FATA Secretariat in 2006 headed by the Additional Chief Secretary, FATA who would be assisted by four Secretaries and a number of directorates of line departments. However, the change in the top hierarchy of the bureaucracy didn't change the fate of the people, for

the people of FATA needed change in the basic administrative and legal structure of the tribal areas to which the troika of the Governor, Political Agents and *Maliks* was not willing to change. The reason was quite obvious. FATA is a money minting place for the Political Agents as well as the Governor; therefore, any change in FATA was tantamount to grind an axe on their own feet.

The affairs of FATA worsened when the Government of Pakistan decided to send Pak army to conduct military operations against militants and terrorists.[26] In addition to FCR, the federal government extended the Actions (In Aid of Civil Power) Regulation - 2011 with retrospective effect of February, 2008 and many other powers enshrined in the Anti-terrorism Act of 1997 to authorize the armed forces to eliminate terrorism. Moreover, Asif Ali Zardari, the then President announced certain reforms for FATA through presidential orders in August, 2011 which moderated the policies of detention and penalty. He allowed political parties to operate in FATA under Political Parties Act 2002. To grant the right of appeal against the decision of the Political Agent and the Divisional Commissioner, FATA tribunal was established under the chairmanship of a senior Bureaucrat, among other things.[27]

The practitioners in bureaucracy give awful justification and impotent grounds in favour of FCR. They conceive the tribesmen as wild and savaged animals who can only be bridled through the inhumane law–the FCR. They think that there doesn't exist a better substitute for FCR to control the unruly tribesmen. They also argue that FCR

has been formulated in consistence with *Riwaj* and has been accepted by the elders of the tribal areas. They contend that the elders of the tribes had gathered and besought the Great Quaid to allow them to live in accordance with their customs and habits which were embodied in *Riwaj* and FCR. I beg to differ with the afore-mentioned illogical and baseless arguments on the following grounds:

Firstly, it is true that the elders of FATA had struck agreements of accession with the Government of Pakistan and had acquiesced to the Great Quaid that they would be loyal to and would lay down their lives for Pakistan, if needed, but they would be allowed to continue their lives in accordance with *Riwaj* to which the Great Quaid had agreed. The speech, he delivered to the tribal *Jirga* on 17th April 1948, reflects the feelings and aspirations of the Quaid for the tribesmen. The contents of the speech categorically express that the Quaid presumed FATA as an autonomous region of the frontier tribes which is evident from the withdrawal orders of the troops by the Great Quaid and his gratitude to the tribesmen for supporting a separate homeland for the Muslims. He stated, “I am glad to note that you have pledged your loyalty to Pakistan, and that you will help Pakistan with all your resources and ability. I appreciate this solemn declaration made by you today. I am fully aware of the part that you have already played in the establishment of Pakistan, and I am thankful to you for all the sympathy and support you gave me in my struggle and fight for the establishment of Pakistan. Keeping in view your loyalty, help, assurances and declarations we ordered, as you know, the withdrawal of troops from Waziristan as a concrete and definite gesture on our part;

that we treat you with absolute confidence and trust you as our Muslim brethren across the border". His speech further clarifies that Pakistan would not unnecessarily interfere in the internal affairs of their land; for he knew it was the land of brave and naturally born fighters and could defend the Western border themselves. He said, "Pakistan has no desire to unduly interfere with your internal freedom". [28] The tribesmen's accession to Pakistan signifies their loyalty, devotion and sense of belonging to the new homeland, but their fidelity and integrity is still doubted in the corridors of power in Pakistan. Hence, the Pak army intervened in FATA without the consent of the tribesmen in order to fight the war on terror which makes the classic violation of those agreements as well as the orders of the Great Quaid. Secondly, the perception that the tribesmen are savage animals is farcical in the sense that they never fought with or raided any territory for themselves despite the fact that they would live in abject poverty. They fell upon the enemy only when their *Nung* was harmed or jeopardized. Thirdly, civilized nations formulate laws for the protection of wild animals and cater for their needs but tribesmen, being humans, are considered as animal herds and have been left to the mercy of the Political Agents being butchers. Fourthly, if FCR could be abolished in NWFP, Baluchistan and Gilgit-Baltistan, why was FATA left to continue with the black laws made by colonial masters to subjugate the tribesmen. The people of FATA are more loyal and have laid down more sacrifices than any other Pakistani for the country but their *Pakistaniat* is still taken for granted. Fifthly, *Jirga* has been recognized as a legal

tool of dispute resolution within the protected areas but there exists duplicity of policy within the same locality of the same tribe. Why a tribesman resides in the protected area is discriminated against the tribesman living in the foot of hill–means non-protected areas. Sixthly, *Riwaj* is the combination of the customary laws of the tribes while FCR is the law enacted by the British Government of India. *Riwaj* provides all rights to the tribesmen and settle all disputes among the tribesmen in accordance with the local customs and usages while FCR has deprived the tribesmen of their fundamental rights and has left the tribesmen at the mercy of the Monarch - the Political Agent. In *Riwaj,* women and children have been given special status of *Nung* whose protection is obligatory on the tribes but FCR has deprived them of their rights to such an extent that they have no mention therein. In *Riwaj*, a dispute of any nature can be referred to the *jirga;* in FCR only those disputes are referred to a *jirga* which are officially reported to the Political Agent. Finally, If FCR could be the best laws ever to handle terrorists and criminals, why it could not be extended to Baluchistan and Karachi where criminals and terrorists would rule the roost.

Quid-e-Azam Address to the Tribal elders in April, 1948

It is pertinent to mention that the concept of central authority made its way among the tribesmen when they compromised on their independence and willingly joined Pakistan. Nevertheless, the mindset in favour of absolute liberty exists among the tribesmen, which is evident from the narration of a tribal *malik*. An English officer inquired from the elders of the tribes which system of governance they would popularly accept in their homeland and offered *Riwaj,* Sharia, British laws or amalgamation of all to be a new system of governance. The elders replied, '***guzara ba sara kawo'*** literally means they would never accept any of the aforementioned systems of governance but would like to have a system which is just like a time-pass. This reality could not be conceived by the successive governments in Pakistan since its inception which ultimately led to the current mess of militancy,

terrorism and the intervention of Pak army into the tribal areas.

In addition to the reasons mentioned in the preceding sections, the vulnerable conditions on the western border and the non-acceptance of Durand Line as international border by Afghanistan forced the Government of Pakistan to maintain the colonial policy of marginalization of the tribal areas and the continuation of its autonomous status under FCR so that the tribesmen might be used as strategic assets against the neighbour on the western border. Under the umbrella of the strategic policy, the Political Agents kept their respective tribal agencies under-developed on the pretext of security and law and order in collusion with the tribal *maliks*. They didn't do away with the administrative division of the agency into protected and non-protected areas. They allowed *jirga* to serve the same purpose as it used to serve the colonial officers. The *jirgamar* of the official *jirga* can put recommendations only to the political officers which can be accepted, rejected or altered by the latter thereafter. Usually, the elders of the *jirga* strive to accommodate the advice of the political officer in their recommendations contrary to the prevailing practices of *Riwaj* due to which the dispute remains unsettled and the disgruntled party flatly refuses to accept the decree of the court of the political officer. In most of the cases, disputes turn into gruesome enmity and results into huge human and financial losses. The Political Agents also crafted a new term of *Lungi-holders* and appointed new *maliks* in addition to the *maliks* of the British era whose figure runs in thousands in the tribal areas. The *lungi-holders* don't know the *Riwaj* indeed but they are being appointed as *jirgamar* for official *jirgas*. I would say *Riwaj* has been left

to the mercy of the political officer and can be moulded into any shape whimsically by the *lungi-holders* on the advice of the Political Agent.[29]

It is pertinent to mention that, albeit, the political administration during the British period was anti-tribesmen, yet it was free of financial corruption and was focused on the vested interests. About the administrative qualities of Robert Sandeman, Mr. Bruce writes, "the leading characteristics of Sandeman were, first and underlying all the others, sympathy with and knowledge of the tribes and their leaders; keen discernment between the good and the bad, the loyal and the disloyal and great quickness in identifying and securing the former on his side, to the discomfiture of the latter. Added to these were freedom from partisanship, consummate patience and tact, combined with untiring energy and labour in all his dealings with the people". [30] On the contrary, the administration and the elders of today's FATA are hands in glove with and plunder the tribesmen with both hands. They levy exorbitant fine on the impoverished tribesmen for a trivial offence under the section of collective territorial responsibility which they pocket themselves. They generate revenue from the smuggling of timber, flour bags, petroleum products and cement, among other things, which they credit to their Agency Development Funds. They incur expenditure from these funds to control the turbulent tribesmen and make payments to informers and *jirgamar* which they term as political expenditure. They don't produce the accounts of these funds to audit and consider them un-auditable. The

Auditor General of Pakistan has repeatedly reported the matter of non-production of record to audit and the gross irregularities committed by the respective Political Agents to the Public Accounts Committee which has gone on the deaf ears of the committee's members. As a result, there has been unimaginable misgovernance which has caused tremendous poverty, unemployment and illiteracy in FATA. I must say the tribesmen turned hybrid with the promulgation of FCR. They could neither follow their own Riwaj in letter and spirit nor could they accept FCR as civil law. As a result, a vacuum had occurred which was filled in by the half-backed *Mullahs* and Taliban.

The monster of talibanization and militancy paralyzed the tribal life in its entirety. They would bear the burden of abject poverty, illiteracy and unprecedented under-development throughout history but they would never forget the injustices committed and the insults inflicted upon them by the Taliban followed by the law enforcement agencies. The Diaspora of the tribal people in general and North Waziristan Agency in particular caused by operation Zarb-e-Azab absolutely changed the political, social and administrative landscape of the tribal areas. FCR and *Riwaj*–the two important legal systems, which survived for centuries in the tribal areas, lost their sanctity. The status of the Political Agent dwarfed in the presence of the army personnel who rule the roost in the war zones of FATA.

In this backdrop, the youths of FATA have begun to speak up against the Frontier Crimes Regulations and demand for the changed status of FATA wherein they have all fundamental rights as enshrined in the Constitution. They have no regard for *Riwaj,* for they

conceive *Riwaj* and FCR as one and the same thing. They express extreme hatred for the disgusting role played by the *maliks* and *lungi-holders* against their tribes for peanut allowances and incentives. They also assume the *Jirga* as a primitive system of dispute resolution. The elderly tribesmen still believe in *Riwaj* and *jirga system* and crave for the freedom and independence enjoyed by their forefathers. The *maliks* of the tribes urge for the old system, which is thought to be the amalgamation of FCR and *Riwaj.* The youths of FATA desire either to be merged with Khyber Pakhtunkhwa or have a separate province.[31]

The existence of FATA looms large in the eyes of the successive governments in Pakistan as well as the International community. They have realized that the existing status of FATA needs to be changed keeping in view the monster of militancy and terrorism which is thought to have been bred and being bred in FATA, though there are countless arguments that can be placed against this perception. Hence, the federal government constituted a reform committee in November, 2015 under the chairmanship of Sirtaj Aziz, who visited all the tribal agencies, met people of different walks of life and submitted its report in August, 2016. The committee is said to have recommended the merging of FATA with Khyber Pakhtunkhwa so as to bring it into the national mainstream. However, it will be kept under *Riwaj* Act for a period of ten years to bring it at par with the rest of Pakistan. The committee has also recommended the Prime Minister to convene all parties' conference to take them into confidence on the issue of FATA. The

committee has also proposed holding of a grand *jirga* with the elders of FATA jointly by the President and the Prime Minister as Article 247 (6) requires the President to ascertain the consent of the tribal elders before changing the status of FATA. [32] The recommendations of the committee have mixed reaction from the people of tribal areas as well as mainstream political parties. Awami National Party, Pakistan People's Party, Qumi Watan Party, Jamat-e-Islami and Pakistan Tahrike-e-Insaf jubilated over committee's recommendations for merge of FATA with Khyber Pakhtunkhwa while Jamiat-ul-Islam (JUI-F) and FATA Grand Alliance felt exasperated and demanded that the merge of FATA with Khyber Pakhtunkhwa without the prior consent of the tribesmen would be disastrous.[33]

Before surfacing of the said proposal the perception for a separate province of FATA was already in the making. In fact, the demand for separate provinces had gained momentum when the people of Bahawalpur and Saraiki belt raised their voices for separate provinces. The Hazarites had also jumped onto their bandwagon and had set out a movement for a separate province - Hazara. Their movement was partially necessitated, in fact, by the change of name of the province from NWFP to Khyber Pakhtunkhwa and partially by the factor of being a distinguished ethnic community. Anyhow, the demand of the tribesmen for a separate province intensified when the government extended Political Parties Act, 2002 to the tribal areas. This demand was not welcomed by a segment of the society across Khyber

Pakhtunkhwa and FATA because they vindicated FATA's merge with Khyber Pakhtunkhwa. They argue that, firstly, FATA is a barren land full of tough terrains and ridges having no agricultural and industrial market economy; therefore, its people are dependent on the adjacent districts for their livelihood. Secondly, there is no central key place which can be made as a provincial capital that is accessible to all. Thirdly, FATA is geographically a narrow strip of land which is illogical to be shaped as a province. Fourthly, FATA has heterogeneous social character to be brought together and made a province thereof. Finally, FATA's merge with Khyber Pakhtunkhwa will politically strengthen the Pashtuns and will help emerge Pashtun nationalism.

The exponents of this viewpoint have their own arguments that can be given due weightage but in political democracy weightage is given to the public opinion. While interacting with the people of the tribal areas on the issue, one can find out counter arguments against the merge of FATA with KPK in the following manner:

One, though FATA is a barren piece of land, yet its natural resources cannot be ignored. If a candid comparison is made between KP and FATA, it reveals that KP has water, gas, mineral resources and tourism sites which can be exploited for revenue generation. On the other hand, FATA has abundance of water and mineral resources as well as potential tourism sites that can be explored and exploited for revenue generation. It must be mentioned here that more than seventy percent of the KP budget outlay comes from the federal divisible pool according to the National Finance Commission

formula. Khyber Pakhtunkhwa generates less than three percent revenues; therefore, it borrows to finance its budget deficit. If FATA becomes a separate province, it will receive due share through NFC Award from the federal divisible pool. Besides, it has the capacity to generate more than three percent revenues from the afore-mentioned sources. It can also borrow in order to finance its budget deficit. In addition, the remittances sent by the tribesmen to their homeland are comparatively more than the remittances sent by the people of KP, which may be an added advantage for FATA province. Two, it is not a rocket science to identify a central place as provincial capital if the entire FATA is connected through a mushroom of roads. If the people of South Waziristan can come to Peshawar for their official or private business, it is appropriate to say that they can also visit Shahkus in Khyber Agency to serve their purpose. Three, FATA may be geographically a narrow strip of land but its geographic and strategic location must augment its significance. The connection of Pakistan's sea ports with Afghanistan and Central Asia and the transit trade thereon are mainly possible through the tough terrains of FATA, which multiplies its strategic importance and can prove to be a greater source of revenue and employment. Four, the argument of FATA being heterogeneous society is invalid. Each province in Pakistan has heterogeneous demographic and ethnic character. For instance, we have Pashtuns, Hazarites, Saraiki and Hindko speaking people in KP but FATA consists of ethnic Pashtuns having identical socio-cultural traits with a slight difference in dialects which signifies the ethnically homogeneous character of the tribal society. Fifth, FATA province will strengthen the Pashtuns

politically. They will get a majority in the upper house (Senate) as the Constitution of Pakistan provides for a bicameral legislature wherein each federating unit has equal representation in the upper house. If Punjab, being a big brother, has invariably a majority in the National Assembly, the Pashtuns of Khyber Pakhtunkhwa and FATA province together with the Pashtuns of Baluchistan will be a political power in the Senate provided they are at one and beyond party affiliations. Finally, if we divide Punjab on the basis of administrative reason, which is a popular perception among the political parties, the merge of FATA with Khyber Pakhtunkhwa seems to be quite illogical. Let me ask the political pundits, don't they think it might cause administrative as well as security issues for the country.

FATA is the most vulnerable territory bordering with the most volatile neighbouring country - Afghanistan. FATA is said to have been a safe-haven for terrorists and extremists; therefore, its status needs to be determined in the best national interests. It can only be served if the decision is made by the popular public opinion rather than the traditional decision-makers who rule FATA like monarchs and have plundered its treasures. Let the people of FATA decide whether they want to join KP or desire to have a separate province.[34]

4.3. Impacts of education and politics on Riwaj

The strength and weakness of the society can be gauged by the number of the educated people it holds and the standard of education they maintain. By this threshold, the tribal areas leg behind to a horrific level as compared

to the rest of Pakistan which is evident from their literacy rate. For instance, Khyber Agency has the highest literacy rate of 26 % as compared to the lowest rate of 17%in North Waziristan.

Prior to this, education in FATA was almost nominal. There were *Madrasas* at mosque and tribes' level where the tribesmen would acquire education of the religious books, as schools and colleges didn't exist to seek formal education. Areas where schools existed, teachers couldn't impart knowledge, for the schools were turned into *Hujra* for guests and stables for animal herds by the *maliks* of the tribes. The political administration would award schools to the tribal *maliks* in lieu of their services to the Political Agents. The Political Agents would keep in mind the quality of espionage services of the *maliks* instead of the feasibility of establishment of the schools. As a result, there would be little enrolment in the schools, thereby low literacy rate in the tribal areas. Besides, the *maliks* wouldn't promote education in their tribes in order to keep the tribesmen illiterate and ignorant from the grandeurs of life. They would send their own children to the best schools and colleges of the country with the political and financial support of the political officers but would keep the ordinary tribesmen at bay from the fruit of education so that they might not attain higher socio-economic status in the society and come at par or become superior than the recognized *maliks* of the tribes. The marginalization of the poor tribesmen in the field of education was furthered by the malicious policy of the religious leaders of the tribes. They would strive to instil in their minds hatred against English education and would issue verdict of *Kufar* against the tribesmen who would adamant to learn formal education. The religious leaders

wouldn't allow television in the *khels* which, they thought, would cause awareness and tend the tribesmen towards English education.

No doubt, the tribesmen were inclined to the *Riwaj* of their ancestors and didn't want to divorce with the way of life evolved by their forefathers, the *maliks* would help reinforce the concept of *Riwaj* in their mind and would maintain a social environment conducive to *Riwaj* wherein their role would be eminent. Similarly, the *Mullah* would strive to maintain a social environment wherein they would play a prominent role. As a result, two methods of dispute resolution emerged in the tribal areas. Areas where *Mullah* would rule the roost, the tribesmen would opt Islamic Sharia for dispute resolution in most of the civil cases; however, they would opt for *Riwaj* in criminal cases. On the contrary, areas where *maliks* would overshadow the role of *Mullah*, the tribesmen would opt for *Riwaj* mechanism of dispute resolution in civil and criminal cases. [35] Generally, the Pashtun tribesmen seek guidance from *Pashtunwali.* They turn towards *Islamic Sharia* when *Pashtunwali* doesn't provide guide to resolve their dispute. They lay down their lives for religion indeed but have contemptuous feelings for the *Mullahs* on account of their greed and lust for money. However, the *Mullah* comes to play a dominant role during social turmoil and religious and tribal wars confronting by the tribe. In addition, he has weekly opportunity to use Friday sermon in his favour and the significance he holds in the prevailing situation. Once he assumes the role and power in the tribal affairs, he turns his guns towards the *maliks* and *Riwaj* and strives to

malign them. It is worth mentioning that the Pashtun tribesmen always tend to *Riwaj* during peace time.[36]

It must be mentioned that before the advent of the Britishers, the tribesmen would decide all criminal and civil cases in accordance with *Riwaj*. When the Britishers discomfited the Indian Muslims in the war of 1858, the Muslims divided into two opposite schools of thoughts – those who thought religious education as a medium of salvation for the Muslims and those who articulated the Western education as the only way to liberate the Muslims from the clutches of the English master and the Hindus antagonism. The former established *Madrasa Deoband* that promoted *Deobandi* brand of Islam and the latter founded the *Aligarh University* that would impart English education to the Muslims of India. The *Deobandi* brand of Islam immensely impacted the Pashtuns of Khyber Pakhtunkhwa and the tribal areas. The religious leaders began to open *Madrasas* in their mosques to provide religious education that seemed to be the first formal step towards Islamization of the Pashtun society. The proclivity of the Pashtun tribesmen towards *Islamic Sharia* multiplied with the phenomenal roles played by Hajji Fazal Wahid of Turangzai, Mullah Muhiuddin alias Pawanda and Hajji Mirzali Khan alias Faqir of Ipi against the colonial rule. Their movements brought about social transformation among the tribesmen. They began to send their children to religious seminaries, for they thought the religious leaders as spiritual men *(Wali)* of the time who would help them go to paradise (*Janna)*. Nevertheless, the increased focus of the religious leaders on religious

education tremendously contributed to the Islamization of the tribal society.[37]

The Islamization of the tribal society continued unabated. The tribal were led to Kashmir in the name of Jihad against the Indian infidels in 1948 where they fought gallantly and liberated one-third of Kashmir from the Indian occupation. In fact, the tribesmen turned to be saviours of Pakistan at all critical moments in history.[38] The initiation of cold war, in which the tribal areas turned to be a launching pad for the jihadist, made the tribesmen religious fanatics. The *Mullah* began to play a pivotal role in the tribal affairs. The Political Agents used the *Mullahs* to mobilize the tribesmen for *jihad* in Afghanistan. The *Mullahs* began to conduct official *jirga* and *maraka* of the tribes. Consequently, the *Mullahs* started speaking against *Riwaj,* for *Islamic Sharia* as conflict settlement mechanism became the sole source of income for the Islamic scholars.[39]

The decade of ninety proved to be a turning point in the lives of the tribesmen. They realized the importance of education and began to establish public schools in the tribal areas. The political administration also made a paradigm shift in its public policy, for Afghan war had come to an end. The role of *Mullah* was diminished. The Political Agents of their respective agencies focused on physical infrastructure and established new schools and colleges. The tribesmen began to enrol their children (both male and females) in schools. As a result, males' literacy rate in FATA immediately jumped up to double

figure. Besides, the tribal youths came out in pursuit of knowledge into the settled areas and witnessed the glamorous world of the urbanized Pakistan. Coming back to their *khels* and tribes they raised voices against the shackles of the *Malki system* and the Frontier Crimes Regulation. They attributed the under-development of FATA to the negative role of the *maliks* and Frontier Crimes Regulation. They created committees and youth organizations in their respective agencies for the welfare and development of the agencies. The members of the youth committees and organizations started active participation in the *jirgas* and *maraka* of the *khels*. They went on to oppose the elders and *Mullahs* in the tribal affairs. The *maliks* would create all sorts of hurdles to the committee members and would strive to hurt the youths in their personal matters in order to dishearten them in their drive against the *malik system*. The political administration, in connivance with the *maliks* of the tribes, would take action against the committee members to cease their activities. This journey of the youths was on its way forward when the Taliban emerged in FATA. The Taliban didn't allow any youth committee and organization in the tribal areas which could come in conflict with their interests. The Taliban also didn't tolerate female education and blew up girl schools across the tribal belt. They also occupied schools for accommodations which were, later on, destroyed by Pak army on the grounds that they were the safe havens of the Taliban. As a result, educational activities came to standstill in FATA. With this the journey set out by the educated youths of FATA against the *malik system* also came to a halt.

In August 2011, the President of Pakistan announced the extension of the Political Parties Act, 2002 to the tribal belt which proved to be a ray of hope for the tribal youths and a blow to the *malik system* and FCR. However, the Political Agents didn't permit political activities in the tribal areas on the pretext of security issues in FATA. The troika of *Maliks*, Political Agents and the Governor made all efforts to stigmatize the reform process in FATA. However, the elections in 2013 were allowed to fight on party basis in FATA which added a new leaf to the history of the tribal areas. The Pakistan Muslim League (N) formed a government in the centre and decided to do away with the centuries' old system of governance in FATA and constituted a reform committee as discussed earlier. The committee presented its report to the Primes Minister and recommended *Riwaj* Act, 2017 to repeal FCR. The Committee also announced FATA to be merged with Khyber Pakhtunkhwa which seemed to be a slip of the tongue of the committee members as they went back on their words later on. The announcement of merge was widely held particularly in Khyber Pakhtunkhwa and certain parts of FATA; however, Maulana Fazalur Rehman and Mahmud Khan Achakzai opposed the proposed merge and demanded to seek the public opinions of the tribesmen before FATA's merge with Khyber Pakhtunkhwa.[40]

The Riwaj Act, 2017 would have been a right step in the right direction, had it been enforced in the light of the true spirit of Riwaj but it couldn't be implemented due to political polarization and lack of will in the corridors of power in the centre.

4.4. Advent of Taliban and their impacts on Riwaj

The advent of war on terror proved to be a turning point in the history of the tribal areas. The cold war of the 20th century between the Capitalists and the Socialists had already sown the seed of religious extremism among the tribesmen which culminated into the form of Talibanization. It is pertinent to mention that the cold war philosophy was not driven by religion but was purely a race for political supremacy in the world politics. The Western bloc, in which Pakistan was a key ally, would use religion as the sole reason of conflict between the two blocs in order to exploit the religious sentiments of the Muslims. In fact, the leaders of the Islamic world knew the real motives of the cold war, for they were a part of the game; however, they were unable to keep themselves aloof from the game of chess and had to take sides either way.

Here again the strategic location of the tribesmen repeated its history. The game of power politics was going on just in the next-door neighbour, Afghanistan wherein the role of the Pashtuns in general and the tribesmen in particular was indispensable. The contemporary Pashtun leaders would try to convince the credulous and straightforward Pashtuns to stay away from the war of the world giants, but they were prone more to religion than the cults of *Pashtunwali* and *Riwaj* of their forefathers. The religious leaders, being cronies of the Western bloc, exploited their religious sentiments and induced them to help the Capitalists against the Socialists as the former were termed as *Ahl-i-Kitab* (people of the books) and the latter were termed as *Dahriya* (Atheists). I don’t want to go into the details of the Afghan war and its

impacts on the Pashtun society, but would like to restrict the discussion to the emergence of Taliban in Pakistan's tribal areas.[41]

I still remember the day when the print and electronic media would highlight the breaking news of the threatening live call from Colin Paul, the Secretary of state to General Musharraf for taking side with America and its allies against Osama bin Laden who was presumed to be the mastermind of the 9/11. Musharraf was said to have been threatened that Pakistan would be doomed to the stone-age if he didn't enter the American led Western Alliance against Al-Qaeda. President Musharraf could not withstand the American pressure and decided to join the American led alliance against war on terror in which Pakistan played a vital role and laid down countless sacrifices.[42]

Nek Muhammad, Taliban Commander speaking in Maraka in May 2014

As a result of the American strikes the Afghan Taliban and the Al-Qaeda fighters crossed into the tribal areas of Pakistan after their ouster from Afghanistan. They were welcomed by the tribesmen as their guests. The tribesmen provided them sanctuaries and took up arms on their side. The al-Qaeda men and Taliban would jointly operate in FATA from where they would infiltrate into Afghanistan and would attack the Allied forces. Inside FATA they had adopted the policy of rapprochement to win over the hearts and minds of the tribesmen. Primarily, they took action against all social evils prevailing in the tribal society as well as the excesses of the political administration. Their drive against social ills provided them such a high moral ground in FATA that they literally started parallel administration there.[43] To obliterate *Riwaj* and the cults of *Pashtunwali* they set out on killing and

beheading the elders of the tribes who were the binding as well as driving force behind the tribesmen. Thousands of tribal elders were butchered and killed by masked men that caused a tremendous terror among the tribesmen. They didn't know who they were? Where did they come from and why? They were so terrified that they could not even talk against the Taliban in their absence. I have never seen such a passive and cowardly behaviour of the tribesmen in my whole life. It was indeed a dilemma for the tribal people. They could neither join the Taliban openly as it might be a cause of seeking the wrath of the government nor could they take side with the government as they knew they would be butchered by the Taliban on the pretext of being spies of the enemy. The *Riwaj* of *Cheegha* and rising of *Lashkar* did away with. The son of the tribesman would be lying mutilated on the road side with a piece of paper on his body stating that the dead body would not be lifted for the funeral until allowed by the Taliban. The tribesmen, including the father and brothers of the deceased, would be standing beside the dead body, but they could not dare to shoulder his funeral to the graveyard and bury him.

No doubt, the British Indian Government had caused great damage to *Riwaj* by giving unbridled powers to official *jirga* for adjudication into civil and criminal cases and award of rigorous imprisonment of 14 years, but the *Shura*, which replaced *jirga*, did more than what the Britishers had done to Riwaj. They had their own brand of *Sharia*, in fact, an amalgamation of *Sharia* and *Pashtunwali* which had no match to *Islamic Sharia* in all respects. If a tribesman would commit a murder they would drag him out of his home and would blow him up into air without due process of *Islamic Sharia* which was

un-Islamic as well as contrary to the *Riwaj* of the tribesmen. The *Riwaj* of protection of the *Hamsaya* was even admitted by the Englishmen in the British India but the Taliban being Pashtuns obliterated this socially acceptable norm in such a manner that the tribesmen began to abandon the custom of tutelage at all. Earlier the asylum-seeker would come and slaughter a *Ghud* at the door or *Hujra* of the tribesman to seek his protection. The tribesman would invite all his khel's people to a feast in the evening to consult and inquire their permission for the protection of the asylum-seeker. If the folkmen would agree, the protector would allow the asylum-seeker to live within the ambit of the local *Riwaj*. He would tell him categorically that he would give a conduct certificate to the local authorities to the effect that the asylum-seeker would live in peace and would not be a source of nuisance thereof. With the arrival of Taliban, the *Riwaj* of *Hamsaya* absolutely changed. The Taliban began to forcibly occupy houses and government owned institutions for accommodation without seeking permission and protection of the tribesmen. On refusal they would be abducted, butchered and thrown on the road side. Neither the Government could take action against the occupants nor could the tribesmen call a cheegha to oust them perforce. Children, who are considered as shining stars in *Riwaj,* began to play as suicide bombers into the hands of the Taliban and would blow themselves up to kill innocent people instead of illuminating the lives of their parents. The tribesmen, who would stand by the poor and orphan child, became so coward and passive to come forward and protect the dying stars against Taliban. Kidnapping for ransom by militants was a routine phenomenon; however, the

resolution of dispute of kidnapping through *Riwaj* got extinct from the tribal society. Neither the Taliban resorted to seek forgiveness for the act of kidnapping in case of identification nor did the khel/tribe of the kidnapped tribesman ever take action against the kidnapper to punish him for the violation of *Riwaj* and humiliation of his fellow tribesman. Never any tribesman accused any Taliban killer on the basis of *Shuk/Shuba* to restore his honour and avoid the *paighore* of his *tarbore* despite the fact he would know his enemy. In addition, religious pluralism that was the beauty of *Riwaj* and *Pashtunwali* did away with, for Taliban has no place for religious pluralism in their rigid doctrine. That's the reason that they began to kill Sikhs, Hindus and Shias and forced them to immigrate to the settle areas of Pakistan for safety and security.

Besides, the dispute resolution mechanism of *Riwaj* underwent a considerable change. The tribesmen began to settle their disputes through Taliban *Shura* which seemed to have been more effective than the *jirga* of the elders of the tribes. The Taliban did not know *Riwaj* and Islamic Sharia indeed but they resolved disputes which couldn't even be settled by the expert *Marakyans* and *jirgamar*. The reason was quite simple. They would coercively enforce their decision even if it would have been wrong or unacceptable to the disputants. Their decision would be driven by the relation of one of the disputants with the Taliban or by receiving huge money therefor.[44]

The Taliban also banned all socio-cultural activities which, they thought, could prove a source of unity among

the tribesmen or could create a nuisance for them. The sports, cultural festivals and even *dhole* which used to be a source of calling and gathering the people of *khel* for *maraka* and *Cheegha* was not allowed as it was pronounced to be a devil substance provoking evil feelings among the people. The concept of assistance and support (*Mlatarh)* of the *Pashtunwali* lost its place in the society as one couldn't support his own brother/son against the Taliban, let alone other folks of the *khel*. The culture of late sitting in *Hujra* by the elders and smoking of *Chillum* (a tobacco pipe) did away with. The youths who would sit in *Hujra* listening to the tale of *Farhad* and *Sherinai* (folk story of love between Farhad and Sherinai) from story-tellers amid midnight cooking and eating of *Halwa* (pudding) ceased to turn up due to fear and life threat of Taliban. Moreover, the pluralism that was the hallmark of the Pashtun tribesmen lost its place in the tribal belt as the Taliban had no mercy for religious minorities and sectarian ethnic groups.

The arrival of Taliban fiercely harmed FCR also. The elders and *maliks* of the tribes ceased to visit the offices of the political administration to attend official *jirga* due to fear and wrath of the Taliban. Their place was taken by the members of the Peace Committee of the Taliban, which was duly recognized by the administration as well as Pak army whose role would be to liaison between the Taliban and the political administration and to hold negotiation between Taliban and Pak army, if needed. Moreover, the Political Agent who used to be the monarch of the Agency remained a laughing stock among the tribesmen as he would beg safety and security from Taliban for which he would pay from the public kitty. With this, the prestige of the office of the Political Agent and

the grace of FCR lost which must be taken into account while reading the *Riwaj* of the tribesmen and the FCR of the British era.[45]

4.5. Riwaj after the intervention of Pakistan army

Riwaj has been under-fire since the British era as has already been discussed. Each imperial force has devastated Riwaj to its own part. No doubt, *Riwaj* was disfigured by the Pashtuns antagonists, whatever was left was destroyed by the army operations in FATA against the militants and terrorists.

The ouster of the Afghan Taliban and Al-Qaeda members from Afghanistan forced them to find out new sanctuaries and abodes for themselves. The geographical contiguity of FATA, its climatic suitability, the hospitality and religious predilections of the tribesmen provided them the best alternative to fighting insurgency against the NATO and American forces in Afghanistan. The war on terror fought on the Afghan soil became a launching pad for the International Intelligence Agencies to fight proxy wars against their enemies. As a result, tribesmen who had religious affinities or had criminal background joined the Taliban ranks. Besides, the poverty-stricken and the out-caste among the tribes with few exceptions tended to become a part of the Taliban force. Any other groups or individuals having enmity with their respective governments or religious bigots poured in into FATA and entered the ranks and files of the Taliban and Al-Qaeda. Hence, the militants entered into a league against the American led forces. They would infiltrate into Afghanistan to attack the enemy and would come back. I would not go into the discussion of how Taliban divided

into good and bad and who was on whom side as it would be irrelevant to this section and topic but would focus only upon the intervention of Pakistan army in FATA.[46]

The nuisance created by the Taliban and Al-Qaeda in Afghanistan from across the border moved the Americans and its allies to force Pakistan to initiate military operation against the militants in FATA. It was a decision to be taken by Pakistan as big as a rock. Nevertheless, Pakistan was going to play its own proxy on its part; therefore, President Musharraf agreed to carry out military operations in FATA against the militants proclaiming that he made the decision in order to safeguard the national interests of Pakistan.[47] He was the Chief Executive of the country and was in a better position to determine the national interests but i, being a citizen of Pakistan from tribal area, don't agree with his definition of national interests and determinants of foreign policy. One doesn't understand those national interests for which he put the integrity and internal stability of the country at stake. Was it the dual standard he was playing with the World Powers - nations which are mighty in all respects than Pakistan? Was it the fear of rollback of Nuclear Program of Pakistan? If it was so, I would say it was his defective, frightened mindset to think so. Nations build nuclear deterrence to frighten the enemy, not to conceal the power they have at their disposal. The Pakistan's Nuclear Program is in the safe hands and will remain in the safe hands. He should have comprehended the fact that the more he would bring the war to his own border, the greater he would be unsafe and unsecured.

Even it is against the tribal way of warfare to put someone-else feud to one's own account, let alone International politics and national strategy of war and battles. He committed an inordinate blunder indeed whose effects have been facing by the people of Pakistan till date. He could curb the militancy in FATA through tribal *Lashkar*, which he could raise through the respective Political Agents instead of sending Pakistan army whose withdrawal was announced by the Great Quaid in 1948.

Anyway I must come to the real topic of military intervention in FATA. President Musharraf was said to have sent more than 80000 armed personnel to the tribal belt in order to fight and engage the militants inside Pakistan so that terrorists fighting in Afghanistan could be combated fiercely by the NATO forces (Tipu:66). Neither side succeeded to achieve their objectives; rather it proved to be a suicide committed by Pakistan. As a result, thousands of innocent people including the army personnel lost their lives. Pakistan suffered financial and economic losses worth billions of Dollars. Millions of tribesmen got displaced from their homes.[48] The *Riwaj* of the tribesmen got stumbled and is just on its last leg. FCR lost its prestige and power. The Political Agent lost his grandeur and became subservient to the army officers. The institution of *jirga* broke down as the *jirga* once constituted by the Political Agent was then formed by the Pakistan army personnel. *Maliks* who speak the parrot's tongue of the army and security Agencies officers are chosen to be the member of the official *jirga.*[49]

General Raheel attending Jirga in North Waziristan

Tribal Jirga Discusses Law and order in North Waziristan

Apart from it, the *Riwaj* of keeping the sanctity of the homes of the tribesmen has been done away with by the army officers. They enter the houses of the tribesmen unwarranted and molest the tribesmen including women

and children. They kill women and children in sheer violation of the Tribal *Riwaj* which has never occurred in the history of the tribal areas. Their houses have been demolished and their *Bazaars* have been razed to the grounds which are beyond comprehension. It is anybody's guess to understand but perhaps there might be some motive behind it which can better be explained by an army officer. However, it is absolutely brutal rather unimaginable to destroy the habitats of the tribesmen and the government buildings on the ground that Taliban were living therein. The Taliban's facilitators and their accomplices should have been punished indiscriminately, but the destruction of infrastructure and habitats of the tribesmen seems to be quite illogical.

The military intervention and operations in FATA caused much havoc to *Riwaj* as well as FCR, which are the basic governance and legal systems in the tribal areas. The Political Agent has remained just a figurehead of the civil administration and serves the army officers like a house-maid. The Achilles' hill of the tribal *maliks* is to have close and friendly relations with the officials of the political administration. This *Riwaj* of the tribesmen have undergone a drastic change and has taken a new turn of cultivating relations with army officers because they know a single voice call of the Major or Colonel can help him serve his purpose.

It would be injustice if I describe one side of the military intervention in FATA. In fact, the military operations have positive bearings on the tribal belt which need to be highlighted here. It is an open secret that FATA has remained a closed society for long. It was kept away from the effects of globalization; therefore, it seemed to be

obscurantist in nature. The tribesmen were happy in their own socio-cultural environment and didn't accept any change. The military operations forced them to leave their tribal habitats and made them experienced the culture of the urban areas. Though they spend their lives in tents, IDPs camps and rented houses, yet they saw and learnt the cost and benefits of the urban culture. They realized the importance of quality education and began to admit their children in the standard schools and colleges of the country. They experienced the fruition of the freedom of expression and movement; therefore, they attained the courage to speak up against the absolute powers of the Political Agents and the frontier crimes regulation. Moreover, the settled areas proved to be political laboratories for the tribal youths where they learnt the vicissitudes of political life which they can use in the changed status of the tribal areas in the days to come. No doubt, the military operations divested them of what they had made and earned during the last seventy years, but the exposure and the openness, they secured, would prove as intangible assets in their future lives which would take them out of the state of obscurantism. A new era of progress and development has begun in the tribal areas. Pak army has focused on physical infrastructure and provision of quality education and healthcare facilities to the tribesmen. New cadet colleges, hospitals, army public schools and sports complex have been constructed so as to bring the tribal areas at par with the rest of Pakistan.

Realistically speaking, the intervention of Pakistan army in FATA immensely harmed *Riwaj* and FCR besides flouting the orders of the Great Quaid who had withdrawn Pak army from the homeland of the brave, fierce

tribesmen and had allowed them to continue their lives in accordance with their local *Riwaj.* Now that everything has been done, it is necessary for the Federal Government and the Pakistan army to bring FATA into the mainstream Pakistan so that the feelings of alienation and deprivation of the tribesmen may be averted and they may be assured that they have equal rights and status as citizens of Pakistan.[50]

4.6. Effects of socio-economic changes on Riwaj

Apart from the imperialism of certain imperialist forces inside and outside the tribesmen's homeland, *Riwaj* has also been affected by the socio-economic changes occurred in the tribal areas. In other words, *Riwaj* adapted itself to the prevailing social and economic conditions of the tribal territories. The tribesmen had been living in abject poverty for centuries due to non-availability of industries as well as sufficient agriculture lands to cater for their needs and livelihood. More than 90 % tribesmen lived below poverty level. However, the idol of fortune favoured them when Zulfiqar Ali Bhutto opened a new venue of seeking their fortunes in the land of the United Arab Emirates. Most of the tribesmen left for UAE and started earning bread for their dependents in Pakistan. They started sending their earnings to Pakistan which brought about considerable socio-economic changes in FATA. The change in the economic lives of the tribesmen raised their living standard no doubt, but it also affected their *Riwaj* significantly that needs to be discussed here.

The socio-economic changes primarily impacted the institution of *jirga* when the newly turned rich people started buying *Lungis* (a type of allowance for malik) from

the Commissioners, Political Agents and elected members of FATA. These *Lungi-holders* have no sense of belongings to their *tribes/khels* and are more prone to serve the Political Agents. They would do right and wrong as ordered by the political administration and army officers keeping aside the genuine interests of the tribes and *khels*. Their survival as *maliks* lies in providing espionage services to the political administration as they have no social status of their own among the tribes. Hence, the old *maliks* and elders lost their status and prestige because the political officers favour the *Lungi-holders* who are ready to fall at their feet. Moreover, the *maraka* of the tribesmen has also been affected by the richness occurred in the tribal areas. Previously, only people having more cultivable land would speak in the *maraka* and would be heard by the people of the *khel*. Now the ordinary tribesmen having more moveable property rule the roast in the tribal *maraka.*[51]

With the change in the socio-economic conditions of the tribesmen, the *Riwaj* of paying *Neka* also got changed. For instance, the compensation for murder was rupees twelve hundred at the dawn of the 20th century, which has augmented up to rupees twelve hundred thousand today. Similarly, the compensation for injured was rupees six hundred which has got increased up to rupees two hundred thousand. The increase and decrease in the *Narkh* of murder and injured also depends upon the social status of the murdered and murderer families.[52]

4.7. Impacts of science and technology on Riwaj

Science has immensely impacted the human life. Science has made unimaginable inventions which have produced great comforts for the mankind. In fact, the world has turned into a global village due to scientific and technological developments. One can talk to and sees one's relative at thousands of miles away from home. The enemy of today has turned smarter and fierce than what he was a few centuries ago. A ballistic missile can strike its target at thousands of distance away in its enemy's country. The mode of communication has tremendously transformed the socio-cultural conditions of societies across the world .As a whole, science and technology have turned a new leaf in the history of mankind.[53]

Weapons used by Tribesmen in ancient time

Old Weapons of Tribesmen

To begin with, science and technology also brought forth revolutionary changes in the lives of the tribesmen and their informal legal system - *Riwaj* because the tribesmen don't live in isolation and are a part of the humans' community. For instance, they would fight with their swords and axes in the 19th and 20th centuries and would have fewer chances of mistaken killings. With the advent of Kalashnikov and other automatic guns the chances of mistaken murders multiplied. When enemies come face to face, they open indiscriminate fire on each other which invariably results in mistaken killings. Earlier to this, if a mistaken murder would happen the murderer would walk into the grave of the victim along with elders, pirs and fakirs of his *khel* and would seek forgiveness. He would accept his mistake and would present *Uzur* to the victim's family. He would be pardoned provided the murdered's family would get satisfied with the *Uzur* of the accused. Same would happen if a tribesman would get injured at the hands of his fellow tribesman. Now the *Riwaj* of mistaken murder with automatic guns has changed. The

murderer doesn't even hesitate to have killed someone mistakenly, for he pretends to be unaware of what has happened in the cross-fire. He thinks the murder might be committed by his enemy, so why should he take its onus on his shoulder. In such a situation, strength of the murdered family does count. If he belongs to a family stronger than the murderer, the latter fulfils the formality of *Riwaj* of forgiveness, if not; the matter goes in limbo for ever and becomes a history. It must be mentioned that *Riwaj* doesn't bar the victim's family to retaliate and take revenge of the mistaken murder if the murderer arrogantly pretends to have not committed the murder. Similarly, when there were no vehicles in FATA and the tribesmen used to get their work done manually or using donkeys and bullocks, there would be little chances of mistaken murders. The arrival of vehicles in FATA changed the mode of transportation, thereby changing the *Riwaj* of mistaken murders occurring due to increased number of accidents and smashing of children by vehicles. The instances given above have already been discussed at length in chapter 2 and can be referred to.[54]

Modern Weapons being manufactured and used in FATA

As have stated earlier, a tribeswoman is something supernatural and requires acting contrary to human nature. The tribesman doesn't expect anything from her which, he thinks, would be against his thoughts of woman's life. She was and is the honour of the family which, if harmed, undermines the honour of the entire family. She had to veil herself appropriately while going outside for some social obligations. She had no financial obligations on her shoulder to earn; therefore, she was bound to her home to cater for her family. She had no choice in marriage. She couldn't go to school for learning; instead she would herd animals or would bring fodder for animals. She couldn't move out of home for shopping but she could fetch water from *Gudar* which was a love point indeed.

With the advent of modern technology of communication and entertainment in the tribal areas, a segment of the tribesmen felt the glamour of life in the outer world. They comprehended their low living standard and its impacts

on the family life. They grasped mentally the abuse of women rights in the tribal areas. They started giving share in inheritance to their daughters and sisters. They began to seek the consent of women in marriage. The cases of elopement came down to a considerable level, thereby resulting in a low level of honour killings in the tribal belt. The educated tribesmen also apprehended the importance of women education and the role of women in the society. Hence, they started buying female schools from the political administration and the elected members to provide an opportunity to their female children to learn. The concept of veil changed among the educated families. Their women observe veil when they go back to their homes in FATA. Once they come out of the tribal bounds, they abandon veil and can't be differentiated with the women of the urban areas.[55]

At the end of this chapter I must reiterate that *Riwaj* of the tribesmen is stumbling and is galloping towards decay. The youths of the tribal areas have more proclivities towards urbanized culture than their indigenous tribal culture. They seem to have been seeking satisfaction in the glamour of the urbanized society instead of the pure, simple and peaceful environment of the tribal areas. They perceive *Riwaj* to be the primitive practices adopted by their forefathers. The educated tribesmen exasperate on *Riwaj* to have resisted their path of progress and modernization. In fact, they confuse *Riwaj* with FCR which they perceive the mother of all evils in FATA. This change reflects the progressiveness of the tribal youths which is a good omen for the tribal areas. Nonetheless, I deem fit to clear up the misconception of the tribal youths

with regard to the negative role of *Riwaj* in the lives of the tribesmen. I do agree that there are certain *Riwaj* practices which are un-Islamic, unconstitutional and negation of the human rights standards in today's global village; however, it is out of place to say that the Pashtun tribesmen legged behind in the pace of progress due to their *Riwaj. Riwaj* is the combination of the social customs and practices which handed down from generation to generation and kept them brethren and united against all odds in life. It is reiterated that *Riwaj* provides a foundation to the statutory laws. We can take the example of Britain where *Riwaj* in the form of common laws exists. All criminal and civil cases are settled by the jury under the common laws that have roots in social customs and usages. Unfortunately, Pakistan didn't formulate indigenous laws and follows the inherited laws of the colonial era. Had laws in Pakistan made in accordance with the local customs and usages, I think, there would have been little space for crimes in the society.

As has already been stated time and again, *Riwaj* is not static. It is mild and flexible and can be moulded either way. The *Riwaj* of our forefathers was befitting to them according to their time and needs. The *Riwaj* of today should be reinterpreted in relation to the current globalized environment within the parameters of the *Pashtunwali*. Each society has its own shared norms, values and practices which keep the members united and foster harmony therein. Societies where shared social values don't exist and people live in a complex social fabric, myriad of social problems haunt the lives of the people and the legal system fails to restore the social order in the society. It is evident from the fact that albeit,

there didn't exist the writ of the government in the non-protected areas of FATA, the crime rate was the lowest as compared to the rest of Pakistan. The reason was quite obvious. The informal legal system – *jirga* and *maraka* used to work and enforced the *Riwaj* of the tribe without resorting to force or coercion. Therefore, we must take pride in the *Riwaj* of our forefathers and uphold it. We must strive to adapt it in accordance with the requirements of the global world. Abrupt change in the way of living of the tribesmen would play havoc with the tribal life as majority of the tribesmen are illiterate to understand the demand of the globalization. The change in mindset of the merely fifteen percent tribal youths has little bearings on the entire tribal *Riwaj*. We must keep in mind the example of the Malakand where *Riwaj* of the tribes was replaced by the formal legal system of the provincial government which failed and resulted into chaos.[56]

REFERENCES AND NOTES

1. Robert Nichols, *The Frontier Crimes Regulation*, (Karachi: Oxford university press, 2013), p. ix
2. Rai Bahadur Diwan Chandobhrai, *The Evolution of North West Frontier Province,* (India: London Book Company, 1938), p.51
3. Robert Nichols, p. x
4. Abu Bakar Siddique, *The Pashtuns, the unresolved key to the future of Pakistan and Afghanistan,* (India: Random House India, 2014), p.34
5. Muhammad Mushtaq Jadun, *Durand Line Status* available athttps://www.dawn.com/authors/5790/muhammad-mushtaq-jadun, accessed on 31 July, 2016.
6. Robert Nichols, p. xiii
7. Ibid. p. x, xi
8. Ibid. p. 14
9. Ibid. p. xiv
10. Ibid. p.9,10
11. Ibid. p. 5
12. Ibid. p. xix
13. Ibid. p. 14
14. James W Spain, *The Ways of the Pathan*, (London: Robert Hale Ltd, 1962), p.49
15. Engineer Abdul Qayum Afridi, *The Hill Tribes along the Durand line,* (Peshawar: IRIS Enterprises, 2003),p. 64
16. Richard Issaq Bruce, *The Forward Policy,* (Quetta:Gusha-i-Adab,1977), p.299-324
17. Interview with Naushar khan, 15 Feb, 2015

18. A brief account taken from the memoir of Richard Issaq Bruce, p.258-323, 299-324
19. Interview with Naushar khan, 15 Feb, 2015
20. Robert Nichols, p.xxi, xxii
21. Analysis of the text of the frontier crimes regulation of 1901.
22. Interview with Naushar khan, 15 Feb, 2015
23. Interview with Ihsan Dawar, 20 Feb, 2106
24. Sajjad Naseer, *The Dialectics between Diversity and Unitarianism*, Sept 2008, , available at https://www.google.com.pk/#q=dialectics+between+diversity+and+unitarianism+by+sajjad+naseer, accessed on 17 July, 2017.
25. *FCR – A Bad Law*, (Peshawar: Human Rights Commission of Pakistan, Peshawar Chapter, 2005).
26. Interview with Ahmad Khan Orakzai, 08 April, 2015
27. Robert Nichols, p. xxiv
28. Aslam khan and Shakeel Ahmad, *Quaid's visit to the Southern Districts of NWFP,* available at www.qurtuba.edu.pk/thedialogue/.../6.../Dialogue_July_September2011_260-266.pdf, accessed on 17 July, 2017.
29. Interview with Ihsan Dawar, 20 Feb, 2016
30. Richard Issaq Bruce, p. 235
31. Interview with Ihsan Dawar, 20 Feb, 2016
32. A. Rauf. K Khattak, *FATA into the Fold,* The Dawn, available at https://www.dawn.com/news/1287567, accessed on 3 October, 2016.
33. Haleem Asad, *Fazal rejects Report of Fata reforms committee*, The Dawn, https://www.dawn.com/news/1287689, accessed on 3 October, 2016

34. Sharifullah, *The dilemma of FATA status*, The Frontier Post Peshawar, available at www.thefrontierpost.com, accessed on 20 December, 2016.
35. Interview with Professor Hakim Jan, Principal Landi Kotal Degree College on June 12, 2017.
36. *Pashtun Tribal Dynamics*,(Peshawar: Tribal Analysis Center), available at www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pd, accessed on 10 November, 2016.
37. Interview with Ihsan Dawar, 20 Feb, 2016
38. Abu Bakar Siddique, p.37
39. Brian K Kerr, *A Progressive Understanding of Pashtun Social Structures amidst Current Conflict in FATA,* available at .http//:www.pakpips.com/download.php?f=139.pdf, p.5, accessed on 17 December, 2016.
40. Interview with Ihsan Dawar, 29June, 2016.
41. S M Burke and Lawrence Ziring, *Pakistan's foreign Policy – An historical Analysis,* (Karachi: Oxford University Press, 1990), p.91-95
42. John R. Sghmidt, *The Unraveling, Pakistan in the age of Jihad*, (New York: Farrar, Straus and Giroux, Nd), p.122
43. Ibid. p. 125-129
44. Brian K Kerr, p.6-9
45. Ahmad Khan Orakzai, 20 July, 2016
46. John R. Sghmidt, p.137
47. Ibid. p. 134,135
48. Interview with Professor Hakim Jan, Principal Landi Kotal Degree College on June 12, 2017.
49. Brian K Kerr, p.6,

50. Ihsan Dawar, 29 June, 2016
51. Naushar khan, 10 March, 2016
52. Ahmad Khan Orakzai, 20 July, 2016
53. *Science and Technology, And the Federal Government, National Goals for a new era*, (Washington DC: Committee on Science, Engineering and Public Policy, National Academy Press,1993), available at https://www.nap.edu/catalog/9481/science-technology-and-the-federal-government-national-goals-for-a, accessed 16 June, 2016.
54. Interview with members of the Codification of Riwaj Committee constituted by the Political Agent North Waziristan vide Office Order No.1142-48, dated 15.06.2017 on 11.07.2017.
55. Ibid.
56. Ahmad Khan Orakzai, 20 July, 2016

CHAPTER 5

RIWAJ - LEFT UNCODIFIED

The last chapter has been split up into three main sections. The first section deals with the merits of *Riwaj* under the caption, '*Riwaj* - a panacea for all evils' and certain malpractices that have negative impacts on the tribal society. The second section of this chapter highlights the reasons for the non-codification of *Riwaj* while in the third section, i have drawn a conclusion and put up recommendations for the readers so that the practitioners among the Pashtuns may put their heads together how *Riwaj* can be improved to make it more effective and the non-Pashtun readers may know how *Riwaj* guides and governs the tribal life and influence the behaviours of the tribesmen.

5.1. Riwaj – a panacea for all evils

Riwaj is, no doubt, the best combination of customary laws and provides solutions to almost all conflicts and disputes confronting by the tribesmen. It is *Riwaj* indeed that has caused a balanced social order in the tribal society. One can compare the crime rate in FATA with the rest of Pakistan since independence; it proves that FATA was the most peaceful territory where one could commute at night in the mountains without fear of robbers and wild animals. *Riwaj* was indeed a panacea for all evils in the tribal areas. The tribesmen would settle all issues amicably. Cheap and speedy justice was available to all at the door-step. The dispute resolution mechanism of *Jirga* and *maraka* would provide viable solutions to the tribesmen at micro and macro levels in the society. If

anything wrong would happen to a tribesman, they would get together and would take a united action against the evil through a process of *Cheegha*. The verdict of the *Jirga* would be implemented properly without any formal implementation force as required in a formal executive and legal set up. There used to be a win-win situation on both sides of the dispute. Both the disputants would think he had won the case as it would have been a decision made by the *jirga* with consensus. A guest would commute carelessly as he would feel safe and protected under *Riwaj.* The asylum-seeker would be protected even at the cost of moulding enmity and loss of precious lives of the tribesmen. Women would feel secured, for they were sacred cows to be honoured and safeguarded in the society. Though there were no orphanages in tribal areas, yet the orphans enjoyed special treatments in the society. Their assets and properties would be taken over by their relatives in safe hands due to the *paighore* of the *tarbores.* Besides, the tribesmen could never be subdued by foreign invaders because they knew how to defend themselves against foreign aggression. They remained free and independent all the times and led a peaceful life. They were happy within their own domain where they enjoyed a simple and natural life full of love and affection. Ghani Khan writes in his book, 'Pathan', "this very custom when given a chance to act alone works perfectly. In the tribal area where nearly four million people live without law courts, policemen, judges and hangmen, you seldom hear of adultery or murder. Elopements are rare, for the risk is great and the price heavy for rare lips and beautiful eyes. If the culprits get married, the hunt is slackened; the boy is made to pay damage in the form of giving away two or three girls to the family from which he stole one.

But he won't live long if he deceives her or deserts her. The whole tribe of the girl will hunt him down and his own will refuse to protect him. Custom doesn't allow protection to a breaker of custom. He stands alone and must pay the price. Even his friend will avoid the funeral. It is hard and brutal, but it works. After all you cannot use a dog leash to tame a wolf".[1]

5.2. Malpractices in Riwaj

No doubt, *Riwaj* seems to have been a panacea for all evils, yet it has certain short-comings and deficiencies which fade away all its beauty and present its bleak picture to the world due to which the concept of *'Pashto Nim kufar da'* has arisen among the Pashtun antagonists. The killing of women for honour, selling of women in marriage, deprivation of women from share in property, killing of the bread-earner in enmity and *Swara* etc are the awesome practices that haunt the lives of the tribesmen. Besides, there are certain perceptions in *Riwaj* which need to be highlighted here as under to pinpoint the negative aspect of *Riwaj.*

5.2.1. Hudd pa hudd mathegi

In *Riwaj* the concept of revenge has taken a very gruesome turn. A tribesman burns all his boats to take revenge for the murder, injury or any other harm inflicted upon him without taking into account its consequences. He neglects the guilt of his victim's kinsman and falls upon his enemy to take revenge from. He kills a noble soul in pursuit of fulfilling the cults of *Riwaj* despite the fact that he knows the wrong of his kinsman. He believes that *hudd* (bone) of his mischievous kin is equal to the

hudd of any noble tribesman in *Riwaj;* therefore, he has the right to kill his enemy in order to escape the *paighore* of his *tarbore* and observe the practice of killing a man for a man of his enemy's family. This usage in *Riwaj* depicts the ferocious, cruel and wild behaviours of the tribesmen having no precedence in other societies.

For centuries, the concept of revenge in Pashtun society was based on the Islamic principles of eyes for eyes, nose for nose and ears for ears. Perhaps the primitive tribal society was impoverished, egalitarian in character and away from the writ of the central authority; that's why only the real culprit would be avenged from. With the advent of socio-economic changes and establishment of writ of the central authority, the spirit of egalitarianism left the Pashtun tribal society which immensely affected the Islamic principle of revenge. For instance, *maliks* strive to maintain close relation with the political administration, thereby easily manoeuvre against his enemy in the government circle. Hence, he, being status symbol of his tribe, turned to be the hot target of his enemies. As mentioned earlier, money started pour in among the Pashtun tribesmen as a result of their earnings in UAE, Saudi Arabia and other foreign countries. The bread-earner of the family would earn money and would send to his parasite family in Pakistan. Therefore, the enemy began to kill the bread-earner to weaken the enemy financially and force him to surrender. Moreover, the replacement of daggers and swords by automatic guns immensely transformed the process of revenge in the Pashtun society in general and the tribal belt in particular. The enemy would kill the real murderer and would open a rapid fire. As a result, innocent people would lose their lives. The victim's family wouldn’t bear the arrogance of

the murderer's family and would take revenge from any member of the murderer's family which ultimately led to the concept of *hudd pa hudd mathegi* (literally means that all bones are equal and any member of the enemy's family can be hurt or killed in revenge).[2]

5.2.2. Marh aaw gram nadi sam (Dead and guilty are not Equal)

Another misconceived notion of *Riwaj* "*marh and gram na di sam*" - means dead and guilty are not equal, also haunts the lives of the tribesmen. Sometimes a spine-chilling murder happens in the *khel* which is widely condemned all around. Later on, the murderer discloses the real story of taking such a horrific action. The people of the *khel* realize the wrong of the murdered and curse him thereafter, but *Riwaj* considers the murdered innocent and the murderer as culprit to be punished. In fact, this misconception exists in almost all societies. Even formal legal frameworks have failed to take any remedial measure in this regard which, i think, is a matter of concern to be contemplated over. However, the justice system of Islam gives such an accomplished judicial framework that provides justice both in this world as well as the hereafter. Islam condemns both the murdered and the murderer and proclaims them as *Jahanami* (men of hell) as both of them are construed as offender - the murderer for killing a human and the murdered for forcing the murderer to kill him. Nevertheless, if the murdered is innocent he is proclaimed as *Shaheed* (martyred) and his abode has been told as *Jannah* (paradise).[3]

About the origin of this misconceived notion of *Riwaj* it is said that in the old days the dacoits of Wazir tribe would come for dacoity and would raid over the villages of the Dawar's tribe. In retaliation, the Dawar tribe would announce *Cheegha* which would sometimes result in the killing of the raiders/dacoits. The Wazir would then kill a man of choice among the Dawar. Thereafter, they would hold a *Jirga* with the elders of the Dawar tribe to put an end to the enmity. In the *jirga* they would put their claim on the basis of this misconceived notion that although a thief/robber was killed in the ambush but dead and guilty were not equal; therefore, the revenge of a raider/dacoit would be taken from the soul of a noble man of the Dawar tribe which ultimately took the shape of Riwaj in Waziristan.[4]

5.2.3. Customary oath on Quran

The tribesmen have a different psyche. They have the history of winning conflicts and battlefields. They are not accustomed to lose but to win a dispute by hook or by crook. They are stubborn and take things on their heart. They spend money to win against their opponents for which they sell their inherited land. They enter into league unnecessarily against their *tarbore* and do something below the belt to overwhelm their enemies. Therefore, when a dispute arises between the tribesmen they refer it to a *jirga*. The jirgamar decide to settle the dispute either through *Riwaj* or *Sharia* with the mutual consent of the disputants. In both the mechanisms, oath on the Holy Quran comes their way. Each disputant puts his claim in a manner to give him a chance of taking oath on the Holy Quran. In fact, the *jirgamar* use their mind and decide on

merit the status of the plaintiff and the defendants. As a matter of principle the plaintiff (claimant) produces witnesses and the defendant (occupant) takes oath; however, it depends upon the claim submitted by the disputants to the *jirgamar*. Riwaj emphasizes upon the maintenance of social order in the society, customary oaths usually cause bad-blood and enmity between the disputants. This Riwaj has always been misused in the tribal areas which, i think, has negative impacts on the tribal society. Besides, the tribesmen know the culprit who needs to be punished but they ignore his offence on the ground that he has taken oath on the Holy Quran and has proved himself innocent which is contrary to all legal norms of the world.

In addition, sometimes a situation arises where a tribesman doesn't like to swear on the Holy Quran, even then he is forced to make ablution and put his hand on the Quran to prove that his claim is right and/or he is innocent depends upon the nature of the dispute.[5]

5.2.4 All claims - right or wrong are negotiable

It is a common maxim among the tribesmen that one has to sit in a jirga and negotiate if someone claims over his *sader/parhkai* (wrapper) on his shoulder. This mindset has also negative impacts over the legal system in the tribal areas and has led to excessive bloody conflicts and disputes. In fact, the concept of *Sulah* has immensely attributed to this mindset wherein the *jirgamar* or the *Salisan* (mediators) strive to bring about a peaceful solution to the problem, thereby divide the disputed amount/commodity between the disputants in a manner

which is acceptable to both of them. The tribesman thinks he loses nothing but gains even if he loses, for he knows he has to tease his *tarbore* anyway. This mindset exists everywhere in the tribal belt which has caused hereditary bone of contentions among the tribes and has greatly perturbed the tribal social set up.

As have said time and again, tribesmen never forget anything good done in their favour or anything bad committed against them. The good deed is remembered for ever and is reciprocated and the wrong is recalled when the wrong-doer is caught in an identical position to take revenge from. Therefore, the Riwaj of acceptance of every claim - right or wrong by jirga has a negative impact on the tribal society which needs to be given a second thought.[6]

5.3 Non-codification of Riwaj

It is a commonplace question why *Riwaj* has been left uncodified. In fact, *Riwaj* is the combination of customary laws which are invariably unwritten and uncodified across the globe. In ancient times, there were no written constitutions as we have today, but societies would run their affairs in accordance with their local customs and habits. With the advent of the nation state system and the concept of the written constitutions, the importance of the customary laws has dwindled and is presumed to have been in conflict with the writ of the central authority.

I would not go back into history to ascertain the reasons for the non-codification of *Riwaj* but would restrict this discussion to the recent past of the British era and the emergence of Pakistan as a separate homeland where

the tribesmen live with pride and lead their lives in accordance with *Riwaj.*

When the Britishers assumed the reins of the sub-continent as new master, they apprehended they would certainly fall out with the Pashtun tribesmen who were never accustomed to foreign rule - direct or indirect. They knew that the tribesmen loved freedom and never compromised on their liberty. However, the Britishers had occupied the entire sub-continent and could not tolerate the restive tribesmen to be a source of nuisance. They also comprehended that the borderland was being used by the Afghan kings against their enemies on the basis of ethnic and religious homogeneity. Hence, the British Raj promulgated the Punjab Crimes Regulation in 1872 to curb the stubborn Pashtuns. The regulation failed to bring normalcy into the frontier regions; therefore, reforms were initiated wherein the significance of *Riwaj* and the role of *Jirga* in dispute resolution were recognized in principle. The Political Agent/Deputy Commissioner was authorized to administer over the tribesmen in conformity with the local customs; however, the Britishers could not agree to certain local customs such as inheritance, honour killings and other marital norms of the Pashtuns which were inconsistent with the English civil laws as well as the civil laws formulated for the Indian colony. In 1901, FCR was reformed and *jirga* was given more power to settle disputes in consonance with *Riwaj.* The colonial master realized that peace and stability in the Pashtun areas could only be possible through the adoption of the tribal customs and traditions and could easily be regulated through the tribal *maliks* and the *jirga* of elders. [7]

Therefore, the need of codification of *Riwaj* could not be felt by the colonial authorities and left it unwritten forever.

The emergence of Pakistan as a separate homeland for the Muslims gave a new rays of hope to the tribesmen. They willingly joined Pakistan thinking that it was their own country where they would lead honourable lives in accordance with their prevailing customary laws. Their perception of the new state proved correct when the Great Quaid, in his address to the tribal elders in 1948, admitted the importance of *Riwaj* of the tribesmen and allowed them to continue with their own customs and habits. However, the successive governments in Pakistan, departing from the sayings and orders of the Quaid-i-Azam, made it a part of the federation and declared it as the federally administered tribal territories in the Constitution of 1973.

As a matter of principle, the Constitution should have been extended to FATA in letter and spirit being part of the federation, but it placed FATA under the direct control of the President and authorized him to frame rules for FATA without the enactment of the Parliament which negates the very spirit of the Constitution. It was a right time either to do away with the *Riwaj* of the tribesmen by bringing them into the mainstream Pakistan or codify their *Riwaj* and incorporate it into the Constitution. Nonetheless, the successive governments kept a status quo and let the civil servants served as Political Agents with the same intent and purpose as the colonial masters had served.

In fact, customary laws provide foundation to the statutory laws upon which the superstructure of the legal framework stands but it seems otherwise in the case of

tribal areas. The elected representatives of FATA can legislate for the rest of Pakistan but they cannot initiate a piece of legislation based on their own *Riwaj* in the Parliament, let alone the codification of *Riwaj* as an alternative to the statutory laws in FATA. Here it is pertinent to mention that the codification of Kurram *Riwaj* occurred as a result of the selfless efforts of the then Political Agent and the magnanimity of the local tribes of the Kurram Agency for which they must be appreciated.

One doesn't know the real intention of the successive governments in Pakistan to keep FCR and *Riwaj* intact but one can safely say that the prevailing governance system in FATA provided a strategic space to be utilized at times when the strategic interests of the state would entail to do so.[8]

The *Riwaj* of the tribal areas envisages certain norms and practices which are being perceived by the human rights activists as inhumane and contrary to human values. For instance, killings for honour and the practice of *Swara* in the tribal *Riwaj* have no place in today's Pakistan; therefore, the codification of *Riwaj* or its incorporation into the Constitution would never be agreed upon by the human rights activists. Hence, the political government in the centre would think hundred times before taking such an action which can cause socio-political polarization in the country.

Besides, Pakistan has been signatory to the Convention on the Elimination of all Forms of Discrimination against Women of 1981 of the United Nations; therefore, it cannot afford to violate the Bills of Rights for women adopted by

the UN General Assembly. Articles 1 of the Conventions says," any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." If one sees *Riwaj* through the prism of this article of the Convention one can infer that *Riwaj* cannot be made a part of the Constitution in Pakistan because it conceives women something super humans, whom if glaze at or touch even mistakenly, get dishonoured which may lead to their honour killings. Article 2 mandates the states which have ratified the Convention to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women. Article 5 requires states parties to take measures to seek to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped roles for men and women". Here again *Riwaj* has set stereotyped roles for men and women which are against this article. A woman is perceived to give birth to children only. She has no financial obligation on her shoulder; therefore, she is confined to the four walls of her house. She is an honour of the family whose protection against any odd or dishonour is the obligation of man in *Riwaj.* Thus, the UN bills for women rights also bars the government of Pakistan to codify *Riwaj* and make it a part of the Constitution.[9]

Riwaj has evolved over years by different tribes corresponding to their local customs and habits. It lacks uniformity in nature and application due to plurality of tribes. A *Riwaj* of one tribe cannot be applied on the people of another tribe. Any forcible application can be fatal and can lead to stiff resistance from that tribe. Each tribe has its own peculiar characteristics which it maintains at all cost. The *Riwaj* of one tribe can be hard and ferocious in some matters while the *Riwaj* of its sister tribe in the same administrative agency may be mild and flexible; therefore, they cannot be blended into a single *Riwaj* for the whole tribal belt. Can we bring panthers, wolves, cats, cows and zebras together to live under the same roof? It would never come. Each inmate has his/her own features and behaves accordingly. The *Riwaj* in tribal areas is said to have the same analogy due to which it is difficult to codify.

Nevertheless, if efforts could be made to unify and codify *Riwaj* it could be done, for the tribal have complete ethnic homogeneity and their *Riwaj,* though vary from place to place, is derived from *Pashtunwali* which is one and the same for all. No efforts have been made either by the successive governments or by the tribal themselves putting their heads together to discern how *Riwaj* could be uniformed and codified casting aside the features of panthers, wolves and cows etc.[10]

5.4. Conclusion

One must see the explicit inconsistency between the statutory laws in Pakistan and the *Riwaj* of the tribesmen.

The statutory laws have been formulated by the legislature or by some dictators under coercive authority which are interpreted by the formal legal courts in the country while the *Riwaj* of the tribal areas is based on the customs and social norms of the indigenous people and is interpreted by the elders of the *jirga*. While comparing the formal legal system of the country with the *Riwaj* of the tribesmen, one can draw a conclusion that *Riwaj* has played a more effective role in the tribal belt to maintain social order in the society than the statutory laws. The tribal are not accustomed to legislative enactments; therefore, they don't abide by statutory laws. They adhere to the practices of *Riwaj* in letter and spirit. They own it and consider its violation like defying the customs and habits evolved by their forefathers and tantamount to an affliction caused to the souls of their buried ancestors. On the contrary, statutory laws have failed to keep order in the society because they lack social acceptance and recognition. They are perceived to have been framed to secure the objectives of the gentry in the country i.e. accumulate more and more wealth and concentrate more and more power into themselves.

The statutory laws in Pakistan provide a defective and deficient formal legal system which accommodates the haves and suppresses the haves-not. The well off can influence the judges either through political approach or by oiling their palms but the impoverished face the brunt of the law and lead their lives in prisons till death comes to rescue them. *Riwaj* does not permit such brutality and injustice. Here the judges are the elders of the tribes whose sense of justice prevails forever irrespective of the financial conditions and political approach of the disputants. The elders know if they do injustice they

would put their careers at stake and would spoil the reputation built by their forefathers in their tribes. They have the courage to speak against evils or wrongs and implement their decisions at all cost. Their judgment can be objected on the occasion if the disputant knows they have made the judgment wrong and contrary to the principles of *Riwaj* which can only be imagined in the formal judicial system, for it will be conceived as contempt of court and contempt of the judges.

In the formal judicial system, getting justice is an uphill task because the courts are formidably overburdened with civil and criminal cases. The judges cannot even read the case and depend upon the lawyers who present the factual position upon which the judges issue their judgments. Due to abject poverty in the country people seek cheap justice which is not possible as the legal counsels charge them exorbitant fees which they cannot afford. Justice delayed is justice denied is rightly applied here as huge backlogs of cases exist in the country and cannot be settled swiftly to deliver justice to the people. *Riwaj* runs absolutely opposite to the legal system in Pakistan. Here judges (elders of the council) have ample time to deal with the case because *Riwaj* has brought forth considerable peace and social order in the tribal society. The tribesmen think hundred times before falling in dispute with his tarbore or any other folksmen because a problem seeker is hated in the tribal society. Besides, *Riwaj* provides a speedy and cheap justice at the door step without going to face the brunt of the judges and the lawyers. Most of the cases are adjudicated by the elders for free with the purpose to keep and maintain peace in the tribe. A nominal fee may be charged in most of the cases until the dispute turns an ugly shape between the

tribes either due to the involvement of the political administration or *tarborewali* of the *tarbore*. In addition, *Riwaj* provides more options of resolving a dispute in the form of *Sulah*, *Sharia* and *Riwaj* which has no replica in other legal systems of the world.

Riwaj seems to have deprived the womenfolk of their fundamental rights. They are said to have been confined to the four walls of their houses and have no freedom of movement and expression, etc. One must agree with this perception, but it needs clarification here why it happens. Being a tribal i have experienced several times that a tribesman would ask his wife to keep her veil off and she would feel ashamed and get offended. She would refuse to do so, saying that her husband desires to throw her modesty down which she is unable to accept. My point is that it is not menfolk who have subjected women to discrimination and harsh treatment; rather women have more inclination to *Riwaj* and *Pashtunwali*. However, there are certain areas in *Riwaj* where women are being treated inhumanely on the pretext of honour which is a matter of concern. There are certain *Riwaj* practices that seem to be inhumane and contrary to Islamic teachings due to which the youths of the new generations repose little confidence in the primitive socio-legal norms of their forefathers.

While going through the story of *Riwaj* and *Pashtunwali* one can infer that the life of a Pashtun tribesman is entangled in the vicious circle of honour. He is devoid of becoming an honourable and civilized human being and has always been exploited by his friends and foes alike. A single word of praise makes a Pashtun tribesman feel that he can conquer the world by his sheer bravery and

chivalry; and that Pashtuns have no match in the comity of nations being a martial race. I may be wrong or right but the concept of honour in *Pashtunwali* reflects that the honour and *Namoos* of the Pashtuns are more vulnerable and can be easily harmed and tarnished upon which the Pashtuns need to contemplate. I leave it to the Pashtuns themselves to ponder over, for honour doesn't lie in killing someone for honour but moulding the honour (here honour means men and women) in such a manner that it can escape humiliation itself and cannot be damaged even if someone attempts to do so.

5.5. Recommendations

In the backdrop of the positive and negative aspects of the tribal *Riwaj,* i would like to put forward certain recommendations at the end for the elimination of *Riwaj* practices which are against Islam and human values. I also recommend certain positive steps which are needed to be undertaken at the government as well as tribes' level to make *Riwaj* a substance that attracts other nations to follow and practise.

Riwaj is flexible, mild and can be moulded in accordance with the prevailing social environment; therefore, the elders of the Pashtun tribesmen should put their heads together and bring about uniformity in its procedures and applications across the tribal belt so that it may pave the way for its codification and incorporation into the Constitution of Pakistan whenever the status of FATA turns to be changed in the days to come.

As mentioned earlier, *Riwaj* is lex non-scripta and provides solutions to all conflicts but it varies from tribe to tribe. Therefore, it needs codification and unification to provide foundation upon which the edifice of the formal

legal system in FATA may be erected. In this regard, the political administration can constitute *jirgas* at Agency level to discern a viable solution for the unification and codification of *Riwaj* of different tribes. The Agency level *jirgas* can be amalgamated then to constitute a grand *jirga* of the FATA's elders to deliberate over the unification and codification of *Riwaj* for the whole tribal belt.

The concept of *Riwaj* being inconsistent to statutory laws and the writ of the central authority is no more valid in the case of Pakistan. Pakistan is a federation wherein the federating units have constitutional power to make legislation on the provincial subjects according to the local environment keeping in view the national and International obligations. Unfortunately, the legal system in Pakistan has been devised on the basis of the inherited English laws without focusing on the local customs and habits of the people of the federating units. Obviously, the law enacted by the parliament means the law formulated by the majority party, i.e. the political party winning more seats in the Punjab province; therefore, its application on the people of FATA would be unrealistic. It is, therefore, recommended that FATA should be given a status of a province with more autonomy in the formulation of laws in accordance with the local but unified *Riwaj*. In this connection, Olaf Caroe mentions, "that law should be grown out, in some sense, from the society. It should be a projection of the common personality. The law of one community can't be applied to a society with utterly different standards without the most dire results". (Caroe: 355)

In addition, there are certain practices in *Riwaj* that have been identified as un-Islamic, inhumane and need to be

discontinued. In this regard the elders of the Pashtun tribes may sit together to eliminate those obnoxious practices and put *Riwaj* in accordance with the modern world legal and social norms. Article 25 of the Constitution of 1973 provides, "Any section of the citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to laws, establish institutions for that purpose". Thus, the tribesmen have the constitutional right to preserve their *Riwaj* provided they desire to change their conditions themselves and get the status of a province wherein they have the power as well as the right to enact laws based on their customary laws.

In fact, human rights activists may agitate anything which is contrary to UN Conventions on the basic as well as women rights but they would never oppose any move of the tribesmen which do not involve human rights violation and reflects the preservation and promotion of their *Riwaj.* It is evident from Article 8 of the ILO 169 Convention (1989), which stipulates as," In applying national laws and regulations to the people concerned, due regard shall be given to their customs and customary laws. These people shall have the right to retain their own customs and institutions where these are not incompatible with fundamental rights defined by the national legal system and internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which arise in the application of this principle". Hence, this article recognizes the rights of the tribesmen to maintain their legal system based on *Riwaj* subject to its compatibility with the legal system in Pakistan as well as International laws. However, this legal complications have been

removed by the UN Declaration on the Rights of the Indigenous people in its Article 5 which states, " Indigenous people have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social, and cultural life of the states". Hence, Human Rights Conventions don't inhibit the codification of *Riwaj* or its incorporation into the Constitution of Pakistan. We have already the precedence of South Africa, where the political parties sat with the tribal chiefs to insert certain customary laws into the Constitution and brought about complete social harmony among the people.

And finally, it is of utmost importance to mention here that the tribesmen have whole-heartedly joined Pakistan and have accepted it as their homeland. They love Pakistan as their motherland and have laid down countless sacrifices for it. Let them be accepted as loyal and true Pakistani and treat them on equal footings with the rest of the citizens. They have changed their minds for Pakistan to which the people of Pakistan need to respond and reciprocate. They should not be marginalized and pushed to the wall. They are the same tribal panthers, wolves and eagles. Their honour and dignity remain the same on which they have never compromised. The only change one can witness among the tribesmen is that they abandoned their love for freedom and independence for the sack of Pakistan. The displacement of millions of tribesmen as a result of Operation *Zarb-i-Azab* proves their love and loyalty for Pakistan which must be recognized. Let them be given a separate province wherein legislation on the provincial list may be enacted in accordance with the *Riwaj* of the tribesmen.

REFERENCES AND NOTES

1. Khan Abdul Ghani Khan, *The Pathan*, available at http://pdfbooksfree.pk/the-pathan-by-khan-abdul-ghani-khan/,p. 29,30, accessed on 16 June, 2016.
2. Interview with Malik Amir Muhammad Wazir, Khojal Khel (SWA), July 2, 2017.
3. Interview with Maulana Mahmud ur Rehman, Mir Ali (NWA), 15 March, 2015
4. Interview with Malik Tarin Khan, Lund Muhammad khel (North Waziristan), 22 March, 2015.
5. Interview with members of the Codification of Riwaj Committee constituted by the Political Agent North Waziristan vide Office Order No.1142-48, dated 15.06.2017 on 11.07.2017.
6. Interviews with Malik Khan Afzal Afridi, Jan 10, 2017, Malik Zahoor of Kurram Agency, March 5, 2015, Malik Usman Dawar, Jan 10, 2017.
7. Robert Nichols, *The Frontier Crimes Regulation*, (Karachi: Oxford university press), 2013, p. x, xi, xiii, 14

8. Interviews with Ahmad Khan Orakzai, a retired Deputy Secretary Law & Order FATA, Secretariat, Peshawar, 20 July, 2016
9. *Understanding the Indigenous & Tribal Peoples Convention, 1989 (No.169),* (Geneva: Handbook for ILO Tripartite Constituents, 2013), p. 32-34available at www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/.../wcms_205225.pd, accessed on May 15, 2016.
10. Interviews with Naushar khan, a retired political officer, 15 Feb, 2015
11. Mohammad Afzaul Shah Bakawee, The Pakhtoons, (Pap.Board printers, Pvt Ltd), p.516-518
12. Richard Issaq Bruce, *The Forward Policy,* (Quetta: Gusha-i-Adab, 1977), p.170
13. Dr.Latif Yad, *Pukhtanay Qabilay Wapizanai,* (www.Khyber .org), p.166
14. Shams Momand, *Mohmand Qabail –Aj aur Kal,* (Peshawar: Khuram Printers, 2006), p.45,47
15. Khan Abdul Ghani Khan, *The Pathan,* available at http://pdfbooksfree.pk/the-pathan-by-khan-abdul-ghani-khan/, p.28
16. Maulana Abdul Qader, *Muqadma on the book, The Pathan by Olaf Caroe*, (Peshawar: Pashto Academy University of Peshawar, Nd), p.26-29
17. Engineer Abdul Qayum Afridi, *The Hill Tribes along the Durand line,* (Peshawar: IRIS Enterprises, 2003), p.21-23

BIBLIOGRAPHY

(BOOKS)

1. Abdul Qaddus, Syed, *The North West Frontier of Pakistan*, Karachi: Royal book Company, 1990.
2. Abdul Qader, Maulana, *Muqadma on the book, The Pathan by Olaf Caroe*, Peshawar: Pashto Academy Peshawar University, N.p.
3. Afridi, Engineer Abdul Qayum, *The Hill Tribes along the Durand line,* Peshawar:IRIS Enterprises University Road, 2003.
4. Al-Tuwajiri, Muhammad Ibrahim, *The Book of Nikah,* Riyadh: King Fahd Library, 2010.
5. Ameen, Noor ul, *Pakhto, Pakhtun aur Pakhtunwali,* Swabi: Sharoom Printing Press, 2015.
6. Babri Gul Wazir, Dr, The Faqir of Ipi, Pakistan Publication, Nd
7. Bakawee, Mohammad Afzaul Shah, *The Pakhtoons,* Pap.Board Printers, Pvt Ltd), Nd.
8. Bellew, H W, *The Races of Afghanistan*, Calcutta: Thacker Spink & Co, 1979
9. Bruce, Issaq Richard, *The Forward Policy, Quetta:* Gusha-i-Adab, 1977.
10. Burke,S M and Ziring,Lawrence, *Pakistan's foreign Policy – An historical Analysis,* Karachi: Oxford University Press, 1990.
11. Carlan, Philip, Nored, Lisa S, Downey, Regan A, *Introduction to Criminal Law,* Massachusetts: Jones & Barlett Publishers, 2011.
12. Caroe, Olaf, *The Pathan,* Karachi: Oxford University Press, 1976

13. Chandobhrai, Rai Bahadur Diwan, *The Evolution of North West Frontier Province,* India: London Book Company, 1938.
14. Dawar, Ghulam Qader Khan, *Cheegha, the call,* Sweden: I. Aleph, 2014
15. Iftihar, S. Dr, *Some Major Pakhtoon Tribes along the Pak-Afghan Border*, Peshawar: Area Study Centre, University of Peshawar, 2005.
16. Keppel, Arnold, *Gun Running and The Indian North West Frontier*, Quetta: Gulshan-e-Adab, 1977.
17. Khalil, Hanif. Dr,*Pashtoon Culture in Pashto Tappa,* Islamabad: National Institute of Historical & Cultural Research Quaid-i-Azam University, Nd.
18. Khan Abdul Ghani, *The Pathan,* available at http://pdfbooksfree.pk/the-pathan-by-khan-abdul-ghani-khan/
19. King, White. L, *The Orakzai Country & Clans*, Lahore: Vanguard Book Ltd, 1984.
20. Momand, Shams,*Mohmand Qabail –Aj aur Kal,* Peshawar: Khuram Printers, 2006.
21. Mohmand, Sher Muhammad, *FATA: Socio-Cultural and Geo-Political History*, Np, Nd.
22. Muhabat Khan, Tipu, *The tribal Areas of Pakistan, A Contemporary profile*, : Sang-i-Meel Publication, Np. 2008
23. Nichols, Robert,*The Frontier Crimes Regulation*, Karachi: Oxford university press, 2013.
24. Qalamyar, Roshan Shah, *Pashtun aur Askariat Pasandi – Asbab-o-Hal,* Peshawar: Sami Printers, 2015.

25. Sghmidt, R.John, *The Unraveling, Pakistan in the age of Jihad*, New York: Farrar, Straus and Giroux, Nd.
26. Siddique, Abu Bakar, *The Pashtuns, the unresolved key to the future of Pakistan and Afghanistan,* India: Random House, 2014
27. Spain, J W, *The Way of the Pathan,* London: Robert Hald Ltd, 1962.
28. Tair,Professor Muhammad Nawaz,Edwards T.C. Mr,*Rohi Mataluna,*Peshawar: Pashto Academy University of Peshawar, 1982
29. Taizi, Sher Zaman. Dr, *Jirga System in Tribal Life,* Peshawar: Area Study Center University of Peshawar), 2007
30. Wazir,Taj Muhammad. Dr,*Waziristan ke Rasm-o-Riwaj ka Shari Qawanin ke sath Mawazna aur Pashtuno ki Tarikh*, Islamabad: Misak Enterprises, 2014.
31. Wylly, H C,Colonel, *From the Black Mountains to Waziristan*, (Sang-e-Meel Publication), Np, 2003.
32. Yad, Lateef. Dr, *Pukhtanay Qabilay Wapizanai,* (www.Khyber .org).

RESEARCH PAPERS/ARTICLES

1. Ahmad, Shabir and Karim, Abid, *The prohibition of Nationalism in Islam*, available at https://www.zawaj.com/editorials/nationalism_ahmed.html.
2. Anand, *Early Vedic Age: Origin, Social life, Economic life, Culture and religion*, available at http://www.historydiscussion.net/vedic-age/early-vedic-age-origin-social-life-economic-life-culture-and-religion/3013.

3. Husain, Abid, *Islamic Laws of Inheritance*, available at www.islam101.com
4. Kareem, Kaleef K, *Islam on Forced Marriage*, available at https://discover-the-truth.com/2013/12/15/islam-on-forced-marriages/.
5. Kerr, Brian K, *A Progressive Understanding of Pashtun Social Structures amidst Current Conflict in FATA,* available at .http//:www.pakpips.com/download.php?f=139.pdf.
6. Khan, Aslam and Ahmad, Shakeel, *Quaid's visit to the Southern Districts of NWFP,* available at www.qurtuba.edu.pk/thedialogue/.../6.../Dialogue_ July_September2011_260-266.pdf.
7. Khan, Barmazid, *History of Pashtuns,* available atwww.barmazid.com/2015/12/a-note-on-turi-tribe_9.html.
8. Mandelbaun, David G. *Polyandry in Kota Society,* 1938*,* available at onlinelibrary.wiley.com/doi/10.1525/aa.1938.40.4.02a.
9. Naseer, Sajjad, *The Dialectics between Diversity and Unitarianism*, Sept 2008, , available at https://www.google.com.pk/#q=dialectics+between+diversity+and+unitarianism+by+sajjad+naseer.
10. *Pashtun Tribal Dynamics*, Peshawar: Tribal Analysis Center, available at www.tribalanalysiscenter.com/PDF.
11. Sultan-i-Rome, Dr. *Land Ownership in Swat, historical and contemporary perspective,* available at www.valleyswat.net/literature/papers/Land ownership in Swat.pdf.
12. Wardak, Ali, *Jirga-a Traditional Mechanism of Conflict Resolution in Afghanistan,* available

atfile:///C:/Users/Shafqat%20Sharif/Downloads/UNPAN017434.pdf.

REPORTS OF THE PUBLIC AND PRIVATE ORGANIZATIONS

1. *Traditional Mechanism of Conflict Resolution: An analysis of jirga in Pakhtoon Society,* Lahore: International conference held in Government College, 2014.
2. *The Jirga: Justice and Conflict transformation*, Islamabad: Community Appraisal & Motivation Program (CAMP), 2012.
3. *Reforming the Jirga system: Sensitization on fundamental human rights*, Islamabad: Community Appraisal & Motivation Program (CAMP), 2013.
4. *Science and Technology, And the Federal Government, National Goals for a new era*, Washington DC: Committee on Science, Engineering and Public Policy, National Academy Press, 1993
5. *FCR – A Bad Law*, Peshawar: Human Rights Commission of Pakistan, 2005

NEWS REPORTS

1. Asad, Haleem, *Fazal rejects Report of Fata reforms committee*, The Dawn, 3 October 2016, available athttps://www.dawn.com/news/1287689.
2. Bilal, Muhammad, *Pak Passes Anti-honour killings and Anti-rape Bills,* The Dawn, available at https://www.dawn.com/news/1288177.

3. Jadun, Muhammad Mushtaq, *Durand Line Status,* The Dawn, 31 July 2016, available at www.Dawn.com
4. Khattak, A. Rauf. K, *FATA into the Fold,* The Dawn, 3 October 2016, available at https://www.dawn.com/news/1287567.
5. Sharifullah, *The dilemma of FATA status*, The Frontier Post Peshawar, available at www.thefrontierpost.com
6. *Tirah Sikhs glad at getting status of tribal elders*, The Dawn, available at www.dawn.com/news/1193942

OFFICIAL DOCUMENTS

1. Amended frontier crimes regulation, 1901.
2. Riwaj-e- Kurram (Turizona) written in 1944 and translated into Urdu language in 1948 provided by the Official of Political Administration, Kurram Agency.
3. *Understanding the Indigenous & Tribal Peoples Convention, 1989 (No.169),* Handbook for ILO Tripartite Constituents,(ILO, Geneva, 2013).

QURANIC VERSES AND HADITHS

1. Quranic verse no: 2:177 available at https://quran.com/2/177, accessed on May 20, 2017
2. Quranic verses and Hadiths of the Holy Prophet about *children's rights* available at https://islamhouse.com/en/articles/378915/, accessed on June 9, 2016.

3. Quranic verses and Hadiths of the Holy Prophet about *children's rights* available athttp://www.islamtoday.net/albasheer/SearchByGoogle.aspx?n=&q=children%20rights%20in%20islam&f=4&t=2, accessed on June 9, 2016.
4. Quranic verses and Hadiths of the Holy Prophet about the *rights of neighbours* available athttp://www.quranreading.com/blog/rights-of-neighbors-in-islam/, accessed on September 10, 2016.
5. Quranic verses and Hadiths of the Holy Prophet about *hospitality* available at https://www.islamreligion.com/articles/10662/treating-guests-islamic-way/, accessed on September 10, 2016.
6. Quranic verses and Hadiths of the Holy Prophet about *Parda (veil)* available at https://wikiislam.net/wiki/Qur%27an,_Hadith_and_Scholars:Hijab, accessed on 16 July, 2017.
7. Quranic verses and Hadiths of the Holy Prophet about *kindness and forgiveness* available at http://abuaminaelias.com/search_gcse/?q=kindness%20and%20forgiveness, accessed on 16 July, 2017.
8. Quranic verses and Hadiths of the Holy Prophet about *brotherhood and love* available at http://abuaminaelias.com/brotherhood-in-the-quran-and-sunnah/, accessed on 16 July, 2017.
9. Quranic verses and Hadiths of the Holy Prophet about *self-respect and respect of others* available at www.learnquran.over-blog.com, accessed on June 9, 2016.

10. Quranic verses and Hadiths of the Holy Prophet about *self-respect and respect of others* available at www.ahadith.co.uk,accessed on June 9, 2016.
11. Quranic verses and Hadiths of the Holy Prophet about *compassion and evil fighting* available at www.quranalonebesthadith.wordpress.com, accessed on June 9, 2016
12. Quranic verses and Hadiths of the Holy Prophet about *truthfulness and keeping promise* available at https://www.islamreligion.com/articles/424/virtue-of-truthfulness-part-1/, accessed on 10 October, 2016.
13. Quranic verses and Hadiths of the Holy Prophet about*honour killings* available at http://www.quranreading.com/blog/islam-and-honor-killings/, accessed on 20 September, 2016.
14. Quranic verses and Hadiths of the Holy Prophet about *divorce* available athttps://quran.com/65
15. Quranic verses and Hadiths of the Holy Prophet about *divorce* available athttp://www.irfi.org/articles/articles_251_300/quranic_concept_of_divorce.htm, accessed on July 18, 2017.
16. Verses of Quran and Hadiths about *usury* available at https://quran.com/2/275, accessed on 17 July, 2017.

INTERVIEWS

1. Afridi, Malik Khan Afzal, Qambar Khel, Khyber Agency, 10 Jan, 2017.
2. Afridi, Malik Lawangeen, (Malik Din Khel), Khyber Agency, 19 December, 2015.
3. Ali, Maulana Feroz, Hassu khel, North Waziristan Agency, 15 March, 2015 and 22 December, 2016.
4. Dawar, Ihsan, journalist and analyst, North Waziristan Agency, 20 Feb, 2016 and 29 June, 2016.
5. Dawar, Malik Abdul Ghanoor, Hassu khel North Waziristan Agency, 20 Jan, 2017.
6. Dawar, Malik Ashraf, Darpa khel, North Waziristan Agency, 5 March, 2015.
7. Dawar, Malik Daud Jan, Hassu khel, North Waziristan Agency, 15 March, 2015 and 11 Sept, 2016.
8. Jan, Hakim Professor, Principal Landi Kotal Degree College, 12 June, 2017.
9. Khan, Malik Tarin, Lund Muhammad khel, North Waziristan Agency, 22 March, 2015.
10. Khan, Muazam, a known Comrade and Khudai Khidmatgar, District Charsada, 22 November, 2016.
11. Khan, Naushar, a retired political officer, North Waziristan Agency, 15 Feb 2015 and 9 May 2015.
12. Mahmud ur Rehman, Maulana, Hassu khel, North Waziristan Agency,15 March, 2015.
13. Members of the Codification of Riwaj Committee constituted by the Political Agent North Waziristan, 11 July, 2017.

14. Muhammad, Jan, a University fellow from North Waziristan and a government servant, 15 Feb, 2015
15. Orakzai, Ahmad Khan, a retired Deputy Secretary Law & Order FATA Secretariat, Peshawar, 8 April, 2015 and 20 July, 2016.
16. Sikh shopkeepers of Khyber Agency, Karkhano market, 20 April, 2016.
17. Turi, Malik Rajab Ali, Parachinar Kurram Agency, 11 November, 2016.
18. Usman, Malik, Lund Muhammad Khel, North Waziristan Agency, 10 Jan, 2016 and 10 Jan, 2017.
19. Wazir, Malik Amir Muhammad, Khojal Khel, South Waziristan Agency, 2 July, 2017.
20. Yousafzai, Rahimullah, Chief Editor, the Daily News Peshawar, 11 June, 2017.
21. Zahoor, Malik, Parachinar, Kurram Agency, 5 March, 2015.
22. Zardullah, Malik, Zeli khel South Waziristan Agency, 13 Jan, 20117.